

Designation Run Report

Dave Gustin Plaintiff and Defense Submissions

Gustin, Dave 08-17-2018

Plaintiffs' Designations 02:10:16

Defense Completeness Designations 00:26:53

Plaintiffs' Counter Counter Designations 00:03:49

Defense Counters 00:07:57

Total Time 02:48:55



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20:4 - 20:9	Gustin, Dave 08-17-2018 (00:00:08) 20:4 Q. Okay. You're familiar with 20:5 what -- with this particular letter, though, 20:6 aren't you? Somebody shared -- somebody 20:7 shared this letter with you before you came 20:8 in here today, right? 20:9 A. Yes.	DG04.1
20:14 - 20:18	Gustin, Dave 08-17-2018 (00:00:14) 20:14 Q. Okay. The first time you had 20:15 seen this letter was a few weeks ago; is that 20:16 your testimony here? 20:17 A. To the best of my recollection, 20:18 yeah. If this is what I think it is, then --	DG04.2
20:22 - 21:4	Gustin, Dave 08-17-2018 (00:00:16) 20:22 Q. All right. Well, here's what 20:23 I'm wondering: This is -- the date on this, 20:24 you can see, Mr. Gustin, is November 4, 2014. 20:25 You were with the company then, 21:1 weren't you? 21:2 A. Yeah, and I've read just enough 21:3 to know down here. This isn't something that 21:4 I can remember getting.	DG04.3
21:16 - 21:22	Gustin, Dave 08-17-2018 (00:00:13) 21:16 Q. All right. So you don't have 21:17 any independent memory that back in 2014 21:18 anybody with McKesson sat down with you and 21:19 talked to you about the issues of this 21:20 letter? 21:21 A. I've never -- I don't think 21:22 I've ever seen this letter.	DG04.4
22:11 - 22:17	Gustin, Dave 08-17-2018 (00:00:11) 22:11 Q. In your job, sir, during that 22:12 time as a D -- I'm going to call it a DRA. 22:13 For the purposes of the jury, that would be 22:14 called -- that is what? What is a DRA as we 22:15 go forward? 22:16 A. Director -- director of 22:17 regulatory affairs.	DG04.5
22:18 - 22:22	Gustin, Dave 08-17-2018 (00:00:10) 22:18 Q. And as director of regulatory	DG04.6

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22:25 - 23:15	<p>22:19 affairs, you were -- you were top of the food</p> <p>22:20 chain for a particular area in directing</p> <p>22:21 regulatory issues for a particular area;</p> <p>22:22 isn't that -- isn't that true?</p> <p>Gustin, Dave 08-17-2018 (00:00:27)</p> <p>22:25 THE WITNESS: I never thought</p> <p>23:1 of myself that way.</p> <p>23:2 QUESTIONS BY MR. PAPANTONIO:</p> <p>23:3 Q. Well, you were a director?</p> <p>23:4 A. I was a director, but at this</p> <p>23:5 time -- if this is in November of '14, I</p> <p>23:6 would have been the auditor then, I think,</p> <p>23:7 not a field director, so I wouldn't have been</p> <p>23:8 engaged in these conversations necessarily.</p> <p>23:9 Q. Okay. Did anybody tell you at</p> <p>23:10 McKesson that this letter that is sitting</p> <p>23:11 in -- you saw this letter three weeks ago.</p> <p>23:12 Somebody from --</p> <p>23:13 A. No. As it turns out,</p> <p>23:14 looking at it, it's not the one that I</p> <p>23:15 thought was shared with me.</p>	DG04.297
24:19 - 24:24	<p>Gustin, Dave 08-17-2018 (00:00:11)</p> <p>24:19 Do you ever remember anybody --</p> <p>24:20 at this point as we're -- as you're looking</p> <p>24:21 at it right now, you don't remember anybody</p> <p>24:22 showing you this?</p> <p>24:23 We can agree to that, correct?</p> <p>24:24 A. I have no recollection of this.</p>	DG04.8
26:15 - 26:25	<p>Gustin, Dave 08-17-2018 (00:00:33)</p> <p>26:15 You tell us what -- in your</p> <p>26:16 mind, what is diversion of a narcotic?</p> <p>26:17 A. Any time -- in my personal</p> <p>26:18 translation of the word, any time that a</p> <p>26:19 narcotic, a drug, is used either by someone</p> <p>26:20 or for a purpose other than its intended use.</p> <p>26:21 Q. Okay. And you were -- that was</p> <p>26:22 part of what you did, part of your job was to</p> <p>26:23 prevent diversion; is that a correct</p> <p>26:24 statement?</p> <p>26:25 A. Yes.</p>	DG04.9

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27:12 - 27:16	Gustin, Dave 08-17-2018 (00:00:08) 27:12 Let me ask you this: You 27:13 were -- you were in charge of how many 27:14 salespeople? 27:15 A. Well, I was never in charge of 27:16 any salespeople.	DG04.10
27:17 - 28:22	Gustin, Dave 08-17-2018 (00:01:04) 27:17 Q. You were overseeing how many 27:18 salespeople? 27:19 A. I oversaw a territory -- a 27:20 territory that comprised about 40-some 27:21 salespeople, I think. I don't even know 27:22 where I got that number from except when I 27:23 had -- when I conducted training calls early 27:24 on as a director with the sales team, it 27:25 seemed like there were 40-some people copied. 28:1 But I don't know who all they 28:2 were, whether that included sales admins and 28:3 salespeople themselves, so I can't give you 28:4 an accurate number, but it was quite a few. 28:5 Q. Right close to 50, would you 28:6 say? 28:7 A. Salespeople? 28:8 Q. Reps, yeah. 28:9 A. Oh, I couldn't say. Close to 28:10 50, close to 40. 28:11 Q. All right. Well, you wrote a 28:12 letter -- do you remember writing a letter to 28:13 McKesson explaining what you -- what your job 28:14 entailed? 28:15 Do you remember writing that 28:16 letter? 28:17 A. Do you have -- yeah, as I -- as 28:18 I withdrew from the position? 28:19 Q. Do you remember ever writing a 28:20 letter to McKesson after you met with 28:21 McKesson lawyers -- 28:22 A. Yes.	DG04.11
29:2 - 29:23	Gustin, Dave 08-17-2018 (00:00:50) 29:2 So you had about 13,000	DG04.12

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29:3 customers, right?

29:4 A. That sounds about right.

29:5 Q. And you covered 15 states; is

29:6 that true?

29:7 A. Technically, yes.

29:8 Q. You had eight distribution

29:9 centers; is that right?

29:10 A. At one time. At the end there

29:11 were six.

29:12 Q. So one person -- I want to make

29:13 sure I understand this right. One person

29:14 covered -- that would be you -- covered 15

29:15 states. You had 13,000 customers. You had

29:16 eight distribution centers. You were doing

29:17 that by yourself; is that true? As a DRA?

29:18 A. Doing the work by myself?

29:19 Q. That was your responsibilities,

29:20 those areas right there.

29:21 A. As the DRA -- yeah, that was my

29:22 area of responsibility, the North Central

29:23 region.

30:15 - 30:23

Gustin, Dave 08-17-2018 (00:00:19)

DG04.13

30:15 Q. So you're familiar with

30:16 diversion. First time you've seen this

30:17 letter was -- did you say three weeks ago, or

30:18 you've not seen it at all?

30:19 A. I don't remember seeing this

30:20 letter at all.

30:21 Q. So I'm showing it to you for

30:22 the first time; is that correct?

30:23 A. Yes.

34:23 - 35:11

Gustin, Dave 08-17-2018 (00:00:25)

DG04.14

34:23 "That having been said, we

34:24 remain concerned that McKesson failed to

34:25 appreciate the seriousness and the systemic

35:1 nature of the CSA-related problems that the

35:2 DEA observed in its several investigations

35:3 into your client's operations."

35:4 Do you see that?

35:5 A. I do.

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35:6	Q. That's the first time you had	
35:7	ever seen those words written, just showing	
35:8	up here today for this deposition; is that	
35:9	true?	
35:10	A. To the best of my recollection,	
35:11	yes.	
35:22 - 36:5	Gustin, Dave 08-17-2018 (00:00:27)	DG04.15
35:22	Q. What does that mean to you from	
35:23	the standpoint of understanding the system of	
35:24	how DRAs operated all over the country?	
35:25	A. It can have more than one	
36:1	meaning depending on how the word is used.	
36:2	The system is an electronic system that is,	
36:3	you know -- functions in the type of world	
36:4	where it could be methodology or a program.	
36:5	I don't know --	
36:6 - 36:12	Gustin, Dave 08-17-2018 (00:00:18)	DG04.16
36:6	Q. Had anybody ever told you that	
36:7	the Department of Justice was concerned that	
36:8	there was actually a systemic failure of	
36:9	McKesson to properly sell its narcotics?	
36:10	Had anybody ever told you that	
36:11	back in 2014 that there was a concern by the	
36:12	Department of Justice of that?	
36:15 - 36:15	Gustin, Dave 08-17-2018 (00:00:01)	DG04.17
36:15	THE WITNESS: No.	
36:17 - 37:2	Gustin, Dave 08-17-2018 (00:00:18)	DG04.18
36:17	Q. Well, that would have been	
36:18	important information, wouldn't it, to you?	
36:19	That would have been important	
36:20	information to understand that their -- that	
36:21	the Department of Justice is saying, "This is	
36:22	not just about Aurora; this is systemic with	
36:23	McKesson."	
36:24	That's important information,	
36:25	isn't it?	
37:1	A. If I was a field DRA, but I	
37:2	wasn't then.	
38:1 - 38:12	Gustin, Dave 08-17-2018 (00:00:15)	DG04.19
38:1	Q. You understand, your company is	

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	38:2 selling narcotics all over the country, 38:3 right? 38:4 A. Yes. 38:5 Q. True? 38:6 And you have a system in place 38:7 to sell those narcotics, right? 38:8 A. Yes. 38:9 Q. And the Department of Justice 38:10 in this letter is saying your system has 38:11 failed in the sale of narcotics throughout 38:12 this country?	
38:15 - 39:7	Gustin, Dave 08-17-2018 (00:00:41) 38:15 Q. You understand that? 38:16 A. I understand what you said. 38:17 Q. Okay. Good enough. 38:18 And you understand if you have 38:19 a systemic failure in the sale of narcotics 38:20 throughout the country, that's a problem, 38:21 that's a public health problem, right? 38:22 A. If there is a systemic failure, 38:23 that would be a problem. 38:24 Q. Well, you knew in 2015 -- in 38:25 2014, you understood that there was already 39:1 something called an opioid crisis in America. 39:2 You knew that, right? 39:3 A. I knew that there was an issue 39:4 with diversion that was leading to an opioid 39:5 crisis, whatever it was referred to then at 39:6 that time, and I knew that from when they 39:7 first formed the team back in 2008.	DG04.20
40:17 - 41:9	Gustin, Dave 08-17-2018 (00:00:32) 40:17 Q. You knew a lot of people were 40:18 dying from narcotics overdoses, right? 40:19 A. Yeah, I watched -- along about 40:20 2009, there was a documentary. I think it 40:21 was called "The Oxy Express." 40:22 Q. Yeah. 40:23 A. And it was specifically, I 40:24 think, routes between Kentucky and Florida, 40:25 and in that, two real people -- you followed	DG04.21

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	41:1 their life story, and one of them, the woman, 41:2 actually died in it. 41:3 Q. Yeah. And you were familiar 41:4 with that, right? 41:5 A. Yes. 41:6 Q. You were familiar with The Oxy 41:7 Express that we're going to talk about in 41:8 this trial? 41:9 A. Yeah.	
57:7 - 57:10	Gustin, Dave 08-17-2018 (00:00:08) 57:7 Do you understand that in 2008 57:8 your company was fined \$13.5 million for 57:9 breaking the law? Generally do you know 57:10 that?	DG04.22
57:12 - 57:20	Gustin, Dave 08-17-2018 (00:00:14) 57:12 THE WITNESS: The only 57:13 recollection I have of that -- and I 57:14 do know about the fine, and I did know 57:15 the number -- was that there was an 57:16 agreement reached, and I don't know 57:17 that there was any admission of any 57:18 guilt or anything else. I just don't 57:19 know the particulars that were 57:20 involved.	DG04.23
59:25 - 60:4	Gustin, Dave 08-17-2018 (00:00:14) 59:25 Q. All right. So you understand 60:1 that in 2008 the company had already been -- 60:2 had already been fined \$13.5 million, and 60:3 they were told specifically what they were 60:4 being fined about. You knew that, right?	DG04.24
60:7 - 60:13	Gustin, Dave 08-17-2018 (00:00:18) 60:7 THE WITNESS: I knew about the 60:8 fine, and I knew about the agreement. 60:9 I didn't read the agreement. What I 60:10 did know after that dealt with what -- 60:11 what then my job was going to be going 60:12 forward in order to address the 60:13 concerns.	DG04.25
70:15 - 71:14	Gustin, Dave 08-17-2018 (00:00:54) 70:15 QUESTIONS BY MR. PAPANTONIO:	DG04.26

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70:16 Q. All right. Let's see what --
 70:17 let's see what this letter says.
 70:18 After the word "egregious,"
 70:19 right there -- you see after the word
 70:20 "egregious," it says, "As outlined in more
 70:21 detail in the letter" -- this letter is what
 70:22 we're going to be spending time on, this
 70:23 letter we're talking about -- "outlined in
 70:24 more detail in the letter you received from
 70:25 the US Attorney's Office, it is apparent that
 71:1 McKesson-Aurora avoided filing suspicious
 71:2 order reports by giving short shrift to
 71:3 supposed due diligence efforts and
 71:4 manipulating the monthly thresholds that were
 71:5 the cornerstone of McKesson's compliance
 71:6 program."
 71:7 Sir, were you ever accused of
 71:8 manipulating monthly thresholds?
 71:9 Did anybody ever tell you that
 71:10 "we've looked at the numbers and we have
 71:11 concluded that Mr. Gustin's facilities are
 71:12 manipulating numbers so that the facility
 71:13 never violates thresholds"?
 71:14 Had anybody ever told you that?

71:17 - 72:4

Gustin, Dave 08-17-2018 (00:00:31)

DG04.27

71:17 THE WITNESS: Yes.
 71:18 QUESTIONS BY MR. PAPANTONIO:
 71:19 Q. All right. Turn to the next
 71:20 page. I think this is where we start talking
 71:21 about you, Mr. Gustin.
 71:22 "Like its Colorado counterpoint
 71:23 [sic], McKesson distribution center 3820 --
 71:24 at 220 Plymouth Road, Livonia, Maryland
 71:25 [sic]" --
 72:1 Were you in charge of Livonia?
 72:2 A. In charge of -- Livonia was one
 72:3 of the distribution centers in the North
 72:4 Central region.

72:20 - 72:22

Gustin, Dave 08-17-2018 (00:00:03)

DG04.28

72:20 You were the DRA for Livonia?

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74:10 - 74:23	<p>72:21 A. I was the DRA of -- yes, for 72:22 Livonia.</p> <p>Gustin, Dave 08-17-2018 (00:00:23)</p> <p>74:10 Q. You were the DRA in Livonia, 74:11 yes or no? 74:12 A. For what time period are we 74:13 talking about? 74:14 Q. We're talking about the time 74:15 period that this investigation is taking 74:16 place, around 2013, 2014. 74:17 A. 2014? 74:18 Q. 2013. 74:19 A. No -- 20 -- 2013, late 2013, 74:20 '14, other people were being brought on 74:21 board, and I was being phased out and going, 74:22 so it's a rough time period for me to 74:23 respond --</p>	DG04.29
75:2 - 75:15	<p>Gustin, Dave 08-17-2018 (00:00:29)</p> <p>75:2 This says, "During a period of 75:3 five years" -- now, the letter that we're 75:4 talking about, the date on this letter is 75:5 2014 -- so it says, "Reported no suspicious 75:6 orders for approximately five years after the 75:7 McKesson settlement with DOJ." 75:8 That's what it says, doesn't 75:9 it? 75:10 A. Yes, I saw that. 75:11 Q. So that would have been your 75:12 conduct we're talking about? 75:13 A. No -- 75:14 Q. The failure to report no 75:15 suspicious orders for five years?</p>	DG04.30
75:18 - 75:18	<p>Gustin, Dave 08-17-2018 (00:00:00)</p> <p>75:18 THE WITNESS: No.</p>	DG04.31
75:19 - 76:3	<p>Gustin, Dave 08-17-2018 (00:00:13)</p> <p>75:19 QUESTIONS BY MR. PAPANTONIO: 75:20 Q. Well, tell me why that's a no. 75:21 You were the DRA there, right? 75:22 A. But, as the DRA, part of my 75:23 responsibility was not reporting suspicious</p>	DG04.298

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75:24 orders. I thought in terms of suspicious 75:25 customers, not suspicious orders. 76:1 Q. Sir? 76:2 A. Suspicious orders was 76:3 reported --		
76:6 - 76:9	Gustin, Dave 08-17-2018 (00:00:10) 76:6 THE WITNESS: Suspicious orders 76:7 was supposed to be being reported by 76:8 other entities within the company, and 76:9 that didn't include me.	DG04.32
76:11 - 76:22	Gustin, Dave 08-17-2018 (00:00:28) 76:11 Q. Sir, you just used the term 76:12 "suspicious customer." At no time did the 76:13 DEA tell you that it was okay to report 76:14 suspicious customers and not suspicious 76:15 orders, right? 76:16 The DEA never told you that 76:17 it's okay for you to report suspicious 76:18 customers rather than suspicious orders; am I 76:19 right? 76:20 A. Told me? 76:21 Q. Yeah. 76:22 A. No, that's not true.	DG04.33
77:7 - 77:16	Gustin, Dave 08-17-2018 (00:00:14) 77:7 MS. MOORE: Gustin 175. 77:8 (McKesson-Gustin Exhibit 175 77:9 marked for identification.) 77:10 QUESTIONS BY MR. PAPANTONIO: 77:11 Q. Now, sir, you just used the 77:12 term "suspicious customers," and said that 77:13 that was your responsibility to report 77:14 suspicious customers, not suspicious orders; 77:15 isn't that what you just said? 77:16 A. That's correct.	DG04.34
78:1 - 79:8	Gustin, Dave 08-17-2018 (00:01:00) 78:1 Q. Right. 78:2 A. That was my understanding from 78:3 the very first meeting. 78:4 Q. Yeah. 78:5 And nobody ever told you that	DG04.35

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78:6 they -- that the company had actually
 78:7 received a letter from the Department of
 78:8 Justice -- let's read it together, about
 78:9 suspicious customers and suspicious orders.
 78:10 You see where it says
 78:11 March 20 -- March 20, 2014?
 78:12 A. I see that.
 78:13 Q. And this is to Geoff, Geoff
 78:14 Hobart. Geoff is getting another letter from
 78:15 the Department of Justice.
 78:16 And you see -- I'm assuming
 78:17 Geoff didn't show you this either, did he?
 78:18 A. I haven't seen this.
 78:19 Q. This is the first time you've
 78:20 laid eyes on this letter, right?
 78:21 A. Yes, it is.
 78:22 Q. And you operated as a DRA for
 78:23 how many years?
 78:24 A. As a field DRA -- DRA for five
 78:25 years starting in '08. That takes me through
 79:1 2013.
 79:2 Q. And you believed it was okay to
 79:3 report suspicious customers and not
 79:4 suspicious orders, right?
 79:5 In your mind, you thought it
 79:6 was appropriate to report suspicious
 79:7 customers, what you just told the jury?
 79:8 A. For me because --

79:11 - 79:20

Gustin, Dave 08-17-2018 (00:00:17)

DG04.36

79:11 THE WITNESS: For me it was
 79:12 reporting customers because that's
 79:13 what I worked with, and someone else
 79:14 had the responsibility of reporting
 79:15 suspicious orders.
 79:16 QUESTIONS BY MR. PAPANTONIO:
 79:17 Q. Who was that?
 79:18 A. Varied from distribution center
 79:19 to DC as far as I know. I don't know because
 79:20 I wasn't part of that mechanism.

80:16 - 81:12

Gustin, Dave 08-17-2018 (00:00:50)

DG04.37

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80:16 Well, let's -- so you -- you
 80:17 thought it was important to report suspicious
 80:18 customers. Let's stay where we are.
 80:19 "Dear Geoff, it was a pleasure
 80:20 to meet with you, Don Walker" --
 80:21 Who is Don Walker?
 80:22 A. He was a person for much of my
 80:23 five years that I reported to in the company.
 80:24 Q. "The purpose of this letter is
 80:25 to explain my thoughts regarding information
 81:1 presented during the last two meetings and to
 81:2 address the impact, if any, the information
 81:3 has on my view of McKesson liability."
 81:4 It says, next paragraph, "The
 81:5 information you and Mr. Walker shared with us
 81:6 seemingly supports two points. The first is
 81:7 that following the 2008 investigation and
 81:8 settlement, McKesson implemented a Controlled
 81:9 Substance Monitoring Program."
 81:10 You're familiar with what that
 81:11 is, right?
 81:12 A. Yes.

81:21 - 83:17

Gustin, Dave 08-17-2018 (00:02:02)

DG04.38

81:21 Q. You had a copy of it, true?
 81:22 A. Yes, I had access to copies of
 81:23 it.
 81:24 Q. Yeah.
 81:25 "And it's designed to identify
 82:1 suspicious customers rather than suspicious
 82:2 orders. The other point is that some DEA
 82:3 representative tacitly endorsed this CSMP for
 82:4 the following reasons: These positions have
 82:5 not changed my thinking regarding McKesson's
 82:6 liability under 21 USC 842."
 82:7 Do you know what 21 USC is?
 82:8 A. By that identifier, no.
 82:9 Q. All right. This is -- this
 82:10 coming from the Department of Justice. It
 82:11 says, "I cannot accept that the CSMP
 82:12 implemented by McKesson after 2008 was

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82:13 designed to -- to identify suspicious
 82:14 customers. It is my informed belief that
 82:15 such a contention is more rationalization
 82:16 than reality."
 82:17 Had anybody told you -- used
 82:18 that word, that the Department of Justice was
 82:19 accusing McKesson of trying to rationalize
 82:20 the CSMP? Anybody ever told you that?
 82:21 A. I don't remember ever hearing
 82:22 that.
 82:23 Q. "The 2008 settlement agreement
 82:24 does not require or implicitly suggest a CSMP
 82:25 focused on suspicious customers." Underline
 83:1 that.
 83:2 I want to come back -- "the
 83:3 2008 settlement agreement does not" -- "or
 83:4 implicitly suggest a CSMP focused on
 83:5 suspicious customers."
 83:6 Do you see that?
 83:7 A. I see that.
 83:8 Q. "To the contrary, the
 83:9 settlement agreement provides that McKesson
 83:10 shall inform DEA of suspicious orders as
 83:11 required by 21 CFR, in that format and
 83:12 mutually agreed upon by the parties."
 83:13 Now, here's what I'm wondering.
 83:14 Did somebody tell you from the company that
 83:15 you're to go ahead and continue reporting
 83:16 suspicious customers rather than suspicious
 83:17 orders? Had somebody told you that --

83:20 - 83:20 **Gustin, Dave 08-17-2018 (00:00:01)**

DG04.39

83:20 Q. -- in your time? I'm going --
 83:22 - 84:24 **Gustin, Dave 08-17-2018 (00:00:57)**

DG04.40

83:22 THE WITNESS: At some point in
 83:23 time, yes.

83:24 QUESTIONS BY MR. PAPANTONIO:

83:25 Q. Okay. When did they tell you

84:1 that you -- when did they tell you that,

84:2 Mr. Gustin, all you have to do is report

84:3 suspicious orders? When did they tell you

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84:4 that -- I mean, suspicious customers, when?

84:5 A. To the best of my recollection,

84:6 when we got together as a team for the first

84:7 time, the settlement was gone over, not so

84:8 that we could read it, but the spirit of it,

84:9 so that we would be able to apply our

84:10 positions in order to prevent diversion going

84:11 forward to the best of our ability, and

84:12 inherent in that was to get to know our

84:13 customer.

84:14 Q. Okay.

84:15 A. That was -- the first direction

84:16 was we needed to know our customer.

84:17 Q. So somebody from the company

84:18 told you it was okay to report suspicious

84:19 customers rather than suspicious orders; is

84:20 that what you're telling the jury?

84:21 A. For me in my position.

84:22 Q. Yeah.

84:23 A. Yes, I wasn't responsible for

84:24 reporting suspicious orders.

85:5 - 85:11

Gustin, Dave 08-17-2018 (00:00:17)

DG04.41

85:5 Q. It says, "Moreover, any

85:6 reasonable analysis of the 2008 settlement

85:7 agreement arrives at the conclusion that its

85:8 aim was to enhance the Comprehensive Drug

85:9 Abuse Prevention and Control Act and

85:10 supporting regulatory scheme, not displace

85:11 it. It would be" --

85:15 - 86:21

Gustin, Dave 08-17-2018 (00:01:03)

DG04.42

85:15 Q. "It would be grossly inaccurate

85:16 to suggest the parties to the settlement

85:17 intended to supersede the Act and relevant

85:18 regulations."

85:19 Do you see that?

85:20 A. I see that.

85:21 Q. It says, "McKesson was subject

85:22 to the Act and regulations generally, and 21

85:23 CFR and 1301 in particular, both before and

85:24 after the September of 21."

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85:25 You would agree that you were
86:1 subject to the CFRs and following the CFRs,
86:2 right?

86:3 A. I'm seeing that that's what it
86:4 says.

86:5 Q. No. You understand that was
86:6 your job, is to follow the CFRs, true?

86:7 A. The CFRs?

86:8 Q. Yeah.

86:9 A. It's -- you know what CFR
86:10 stands for?

86:11 Q. Sir, I'm not -- I do.

86:12 Do you?

86:13 A. I don't know that anybody ever
86:14 stretched out the acronym, but, yes.

86:15 Q. You know what it is?

86:16 A. We're -- we were responsible
86:17 for helping to implement or oversee, I think,
86:18 things that are related to --

86:19 Q. All right. Let's go to the
86:20 next page.

86:21 A. -- McKesson's registration.

87:18 - 88:18

Gustin, Dave 08-17-2018 (00:01:10)

DG04.43

87:18 Q. "Furthermore, all of the
87:19 versions of the CSMP PowerPoint prepared and
87:20 presented by McKesson over the years clearly
87:21 indicate that the focus of the CSMP was on
87:22 the order, not on the customer."
87:23 Do you see that?

87:24 A. I see that.

87:25 Q. It says, "Indeed the attached
88:1 slide from September 16, 2008 rendering
88:2 appears in, one form or another, in every
88:3 McKesson PowerPoint of which I am aware from
88:4 July 31, 2008, though Mr. Walker's -- through
88:5 Mr. Walker's presentation last week. In all
88:6 the material I've seen, it is a questionable
88:7 order that should have been -- that should
88:8 have triggered the level of review process,
88:9 and it is -- it is the order that should have

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88:10 been rendered suspicious if the three-level
 88:11 review did not resolve the apparent
 88:12 abhorrency."
 88:13 Now, do you understand that,
 88:14 sir, that you were actually at meetings --
 88:15 well, let me ask you: Do you remember
 88:16 meetings where they made presentations of
 88:17 what the CSMP is?
 88:18 A. Yes.

88:23 - 89:5

Gustin, Dave 08-17-2018 (00:00:20)

DG04.44

88:23 Q. Yet at no point in those
 88:24 meetings did the CSMP ever say that reporting
 88:25 suspicious orders -- I mean, reporting
 89:1 suspicious customers rather than suspicious
 89:2 orders was appropriate, not one time?
 89:3 A. Yes, but it wasn't for me to
 89:4 do. That was -- that took place at a
 89:5 different place in the process.

89:23 - 90:8

Gustin, Dave 08-17-2018 (00:00:12)

DG04.46

89:23 Q. Are you telling the jury you
 89:24 had no responsibility to report suspicious
 89:25 orders, yes or no?
 90:1 A. To report suspicious orders to
 90:2 the DEA?
 90:3 Q. Yeah.
 90:4 A. No.
 90:5 Q. You had no responsibility?
 90:6 A. I didn't feel that
 90:7 responsibility based upon the way the program
 90:8 was outlined.

90:9 - 90:19

Gustin, Dave 08-17-2018 (00:00:22)

DG04.47

90:9 Q. So your understanding is
 90:10 that -- I want to be really sure about this.
 90:11 Your understanding is that Dave
 90:12 Gustin had no responsibility to report
 90:13 suspicious orders to the DEA; is that your
 90:14 testimony here today?
 90:15 A. The way I understood my
 90:16 position, my job, yes, I -- because someone
 90:17 else was supposed to be generating a report

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90:23 - 91:1	<p>90:18 with suspicious orders and giving that to the 90:19 DEA.</p> <p>Gustin, Dave 08-17-2018 (00:00:06)</p> <p>90:23 Your understanding the whole 90:24 time you were there as a DRA was that you had 90:25 no responsibility to report suspicious 91:1 orders?</p>	DG04.48
91:5 - 91:5	<p>Gustin, Dave 08-17-2018 (00:00:01)</p> <p>91:5 Q. Is that true?</p>	DG04.49
91:9 - 91:14	<p>Gustin, Dave 08-17-2018 (00:00:13)</p> <p>91:9 Q. Is that true? 91:10 A. My responsibility was to report 91:11 suspicious custom -- customers to the DEA, to 91:12 the field offices, which I did multiple times 91:13 because we disassociated ourselves many 91:14 times.</p>	DG04.50
91:15 - 91:23	<p>Gustin, Dave 08-17-2018 (00:00:18)</p> <p>91:15 Q. But not suspicious orders, 91:16 right? 91:17 A. Suspicious orders was a report 91:18 that -- my understanding is that was 91:19 generated and was supposed to be then sent to 91:20 the various DRA field offices so that they 91:21 would have it, and I thought it was done on a 91:22 nightly basis and carried out by someone in 91:23 the DC.</p>	DG04.51
92:1 - 92:23	<p>Gustin, Dave 08-17-2018 (00:00:42)</p> <p>92:1 THE WITNESS: I'm sorry. I 92:2 meant DEA field offices. 92:3 QUESTIONS BY MR. PAPANTONIO: 92:4 Q. Well, let's read this. 92:5 It says, "In fact, the idea the 92:6 distributor would implement a CSMP that 92:7 concentrates on suspicious customers rather 92:8 than suspicious orders is contrary to the 92:9 letter and the spirit of those provisions of 92:10 the Act and regulations aimed at curbing drug 92:11 diversion." 92:12 Do you see that? 92:13 A. I see that.</p>	DG04.52

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92:14 Q. "Concentrating on customers
 92:15 would necessarily allow a number of
 92:16 suspicious orders to get through."
 92:17 Do you see that?
 92:18 A. I see that.
 92:19 Q. And again, as we are doing
 92:20 this, nobody before you walked in here today
 92:21 had ever shown you this letter, true?
 92:22 A. Again, I don't remember this
 92:23 letter.

92:24 - 93:9

Gustin, Dave 08-17-2018 (00:00:28)

DG04.53

92:24 Q. "After all, a customer cannot
 92:25 be deemed suspicious until a pattern of
 93:1 aberrant orders is developed."
 93:2 And it says, "Each suspicious
 93:3 order filled risks placing a controlled
 93:4 substance -- substance in the hands of
 93:5 persons who would -- who should not have
 93:6 them. I cannot envision a DEA diversion
 93:7 perspective endorsing such an idea, and I
 93:8 see -- I have seen nothing indicating that
 93:9 the DEA representative did so."

93:10 - 94:11

Gustin, Dave 08-17-2018 (00:01:15)

DG04.54

93:10 Now, is it your testimony that
 93:11 somebody from the DEA told you that you could
 93:12 just report suspicious customers and not
 93:13 suspicious orders?
 93:14 A. No, that's not what I said.
 93:15 Q. Where did you get the idea that
 93:16 all you had to do was report suspicious
 93:17 customers? Where did you get that idea?
 93:18 A. I was told that whenever -- and
 93:19 this would have been by -- in the meetings
 93:20 that we had as a team, that our
 93:21 responsibility was once we made a level 3 and
 93:22 took action upon a customer, that we had a
 93:23 responsibility to report that, the name of
 93:24 the customer and the fact that we had
 93:25 disassociated ourselves from the customer to
 94:1 the local field DEA offices. That -- the

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	94:2 program, when I started in 2008, naturally 94:3 evolved over a period of time. 94:4 The first meetings centered 94:5 around getting to know our customers, but at 94:6 the same time the company was responding to 94:7 the orders aspect of it through other means. 94:8 I can only speak to my position 94:9 as a DRA, and in that position, I was 94:10 visiting customers and not looking at 94:11 suspicious order reports.	
94:16 - 94:18	Gustin, Dave 08-17-2018 (00:00:02) 94:16 MS. MOORE: Gustin 211. 94:17 (McKesson-Gustin Exhibit 211 94:18 marked for identification.)	DG04.55
98:1 - 98:12	Gustin, Dave 08-17-2018 (00:00:23) 98:1 MS. BROWNING: Just take a 98:2 minute and look before you -- before 98:3 you answer any more questions. 98:4 QUESTIONS BY MR. PAPANTONIO: 98:5 Q. Sir, I'm on the first page. 98:6 Okay. 98:7 MR. PAPANTONIO: If -- we're 98:8 going to go off record -- if you 98:9 haven't taken the time to prepare him 98:10 for this, that's not my problem. We 98:11 will go off record if he wants to read 98:12 these documents.	DG04.56
99:13 - 99:18	Gustin, Dave 08-17-2018 (00:00:07) 99:13 MR. PAPANTONIO: I'm going to 99:14 give him about one more second and 99:15 then we're going off record, and it's 99:16 going to go against your time. So 99:17 we're not going to take my time doing 99:18 this.	DG04.57
100:17 - 102:5	Gustin, Dave 08-17-2018 (00:01:07) 100:17 Q. You're ready? Let's go. 100:18 You see this first page -- you 100:19 see -- do you see the first page on this 100:20 document? 100:21 A. I do. Now I do.	DG04.58

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100:22 Q. Now you do?

100:23 A. Yeah.

100:24 Q. And it has your name at the top

100:25 of it, doesn't it?

101:1 A. Yes.

101:2 Q. And it says -- it says 2011,

101:3 doesn't it?

101:4 A. Yes, it does.

101:5 Q. And then this is you writing

101:6 this: "The registrant shall design and

101:7 operate a system to disclose to the

101:8 registrant suspicious orders of controlled

101:9 substances. The registrant shall inform the

101:10 field division of the administration in this

101:11 area of suspicious orders when discovered by

101:12 the registrant."

101:13 Suspicious orders. It even

101:14 tells you what suspicious orders include,

101:15 right?

101:16 A. Yes.

101:17 Q. Unusual size, orders deviating,

101:18 normal pattern, unusual frequency.

101:19 "It is my opinion that the

101:20 previous reports were not the exclusive and

101:21 proper response to this regulation. We have

101:22 an obligation to report suspicious orders."

101:23 Do you see that?

101:24 A. Yes.

101:25 Q. "With no clear definition of

102:1 what constitutes a suspicious order, we must

102:2 rely on our own judgement as to what that

102:3 is."

102:4 It says "we," you, right?

102:5 A. We as a company.

102:8 - 102:10

Gustin, Dave 08-17-2018 (00:00:03)

DG04.59

102:8 Q. All right. We as a company,

102:9 and you're part of the company?

102:10 A. Yes.

104:13 - 104:21

Gustin, Dave 08-17-2018 (00:00:21)

DG04.60

104:13 Q. Well, you know DRAs were --

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	<p>104:14 DRAs were responsible for reporting</p> <p>104:15 suspicious orders; do you know that, or don't</p> <p>104:16 you know that?</p> <p>104:17 A. I do not know that I ever felt</p> <p>104:18 like I was responsible to report suspicious</p> <p>104:19 orders to anybody but rather to follow up</p> <p>104:20 with the customers that generated an order of</p> <p>104:21 interest.</p>	
105:19 - 105:25	<p>Gustin, Dave 08-17-2018 (00:00:12)</p> <p>105:19 Q. So your company -- your company</p> <p>105:20 told you you didn't have to report suspicious</p> <p>105:21 orders; is that what -- is that your</p> <p>105:22 testimony here?</p> <p>105:23 A. As part of my job description,</p> <p>105:24 that's correct. Someone else was reporting</p> <p>105:25 suspicious orders.</p>	DG04.61
106:7 - 106:13	<p>Gustin, Dave 08-17-2018 (00:00:10)</p> <p>106:7 Q. What was your responsibility on</p> <p>106:8 suspicious orders?</p> <p>106:9 A. On suspicious orders -- on the</p> <p>106:10 suspicious order report --</p> <p>106:11 Q. Yeah.</p> <p>106:12 A. -- that was sent? I didn't</p> <p>106:13 have a direct responsibility.</p>	DG04.62
106:14 - 107:13	<p>Gustin, Dave 08-17-2018 (00:00:40)</p> <p>106:14 Q. What was your responsibility on</p> <p>106:15 suspicious orders in general?</p> <p>106:16 A. In general?</p> <p>106:17 Q. Yeah.</p> <p>106:18 A. If they triggered a level 2 or</p> <p>106:19 a level 3, then that's when I got involved.</p> <p>106:20 Q. Oh, that's when you got</p> <p>106:21 involved.</p> <p>106:22 And that's when you reported</p> <p>106:23 suspicious orders, right?</p> <p>106:24 A. No. That's when I would report</p> <p>106:25 a suspicious customer, if, in fact, the</p> <p>107:1 investigation led to that.</p> <p>107:2 Q. And the DEA said there's no --</p> <p>107:3 there's nothing in the law that says you can</p>	DG04.63

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	107:4 report a suspicious customer. We're looking 107:5 at it. 107:6 A. Yes. 107:7 Q. You just read it. 107:8 The DEA and the Department of 107:9 Justice said that you -- this idea of 107:10 reporting suspicious customers is not valid. 107:11 We just read that, didn't we? Didn't we? 107:12 Yes? 107:13 A. Yes.	
107:23 - 107:25	Gustin, Dave 08-17-2018 (00:00:09) 107:23 Q. Sir, we're still on the 107:24 letter that your name appears. The document 107:25 is 1667. Go to page 5, please.	DG04.64
107:25 - 108:8	Gustin, Dave 08-17-2018 (00:00:18) 107:25 It says, 108:1 "Dave Gustin" -- at the very top, "Dave 108:2 Gustin, DRA, North Central." 108:3 And then it has Tom McDonald. 108:4 Tell the jury who Tom McDonald is. 108:5 A. He would have been my 108:6 counterpart in the west region. 108:7 Q. Your counterpart? 108:8 A. Another DRA.	DG04.299
108:15 - 109:8	Gustin, Dave 08-17-2018 (00:00:43) 108:15 Q. It says, "Variance and 108:16 suspicious reports." 108:17 Do you see that? 108:18 It says, "I don't believe you 108:19 have identified a suspicious order or 108:20 customer within the last six months, have 108:21 you? It is still our part -- it is still 108:22 part of our process to report all suspicious 108:23 orders to the DEA and to the state board when 108:24 they're discovered. Our current process 108:25 better identifies suspicious orders rather 109:1 than orders of interest. One man's opinion." 109:2 Now, the guy writing this, Tom 109:3 McDonald, is a DRA, correct? 109:4 A. Yes.	DG04.65

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109:5 - 110:20	<p>109:5 Q. And he's saying, "I don't 109:6 believe you've identified" -- and this is to 109:7 you, correct? 109:8 A. To me and Bill Mahoney. Gustin, Dave 08-17-2018 (00:01:11) 109:17 Now, would you please look at 109:18 4, page 4, right in front of page 5? 109:19 At the very bottom it says -- 109:20 do you see where it says "from Dave Gustin"? 109:21 A. Yes. 109:22 Q. It says -- and it's to Tom 109:23 McDonald. Do you see that? 109:24 A. Yes. 109:25 Q. And it's got Keith McIntyre 110:1 right there. 110:2 And it says, "It is also our 110:3 province -- it is our province to define what 110:4 is suspicious according to the DEA. I have 110:5 gotten good feedback from you and Bill and 110:6 have a direction to take. Thanks, guys." 110:7 Now, did you feel like it was 110:8 your province to determine what a suspicious 110:9 order was? Is that -- 110:10 A. A suspicious order? 110:11 Q. Is that -- yes, that's exactly 110:12 right. We're talking about suspicious orders 110:13 here. 110:14 A. As being reported to the DEA? 110:15 Q. Yeah. 110:16 A. No, that wasn't -- 110:17 Q. Well, it says, "It is also 110:18 our -- it is our province to define what is 110:19 suspicious according to the DEA," right? 110:20 A. Yes.</p>	DG04.66
111:5 - 111:8	<p>Gustin, Dave 08-17-2018 (00:00:07) 111:5 Q. You understand the DEA gave you 111:6 very specific directions on what -- about how 111:7 to go about reporting a suspicious order, 111:8 right?</p>	DG04.67
111:14 - 112:4	<p>Gustin, Dave 08-17-2018 (00:00:22)</p>	DG04.68

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	111:14 A. Me? No.	
	111:15 Q. Dave Gustin.	
	111:16 Oh, nobody gave you any	
	111:17 direction?	
	111:18 A. The DEA?	
	111:19 Q. Right.	
	111:20 A. Giving me direction on what a	
	111:21 suspicious order is?	
	111:22 Q. Right.	
	111:23 A. No.	
	111:24 Q. The DEA never gave you any	
	111:25 information on what defines a suspicious	
	112:1 order; is that your testimony?	
	112:2 A. Yes, I asked. They said -- and	
	112:3 Jeff Connors with the DEA very specifically	
	112:4 said they couldn't define that for me.	
112:13 - 112:21	Gustin, Dave 08-17-2018 (00:00:17)	DG04.69
	112:13 Q. So you -- as we sit here today,	
	112:14 you still don't know what a suspicious order	
	112:15 is, do you?	
	112:16 As we sit here, what is it,	
	112:17 20 -- this year, 2018, you still don't know	
	112:18 what a suspicious order is; is that a fair	
	112:19 statement?	
	112:20 A. I know what an order of	
	112:21 interest is.	
112:22 - 113:3	Gustin, Dave 08-17-2018 (00:00:20)	DG04.70
	112:22 Q. Do you know what a suspicious	
	112:23 order is, yes or no?	
	112:24 Does Dave Gustin, who was DRA,	
	112:25 understand what a suspicious order is, yes or	
	113:1 no?	
	113:2 A. By my interpretation of a	
	113:3 suspicious order, yes.	
113:5 - 113:12	Gustin, Dave 08-17-2018 (00:00:19)	DG04.71
	113:5 So let's on go with this	
	113:6 letter -- let's go on with this letter on	
	113:7 1431 with -- the Department of Justice is	
	113:8 telling you this idea of reporting suspicious	
	113:9 customers is just not appropriate.	

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113:10	Remember we talked about that?	
113:11	A. I remember we talked about	
113:12	that.	
113:24 - 114:16	Gustin, Dave 08-17-2018 (00:00:41)	DG04.72
113:24	Q. It says, "However, even if one	
113:25	accepts arguendo that DEA personal --	
114:1	personnel tacitly accepted a CSMP focusing on	
114:2	suspicious customers, the available evidence	
114:3	indicates that McKesson was not following its	
114:4	own program."	
114:5	How about that, is that the	
114:6	first time you've seen that? In other words,	
114:7	they say even if you have -- even if you want	
114:8	to use suspicious customer, you're still not	
114:9	using your own program; did you know that?	
114:10	A. I see that's what it says.	
114:11	Q. Yeah.	
114:12	Before you came in here today,	
114:13	you did not know that even if we accepted	
114:14	this thing that you're talking about,	
114:15	suspicious customers -- you didn't even	
114:16	operate under that, did you?	
114:20 - 116:6	Gustin, Dave 08-17-2018 (00:01:21)	DG04.73
114:20	Q. Your company, right?	
114:21	A. Sounds like opinion.	
114:22	Q. That's what they're saying	
114:23	right here. This is the Department of	
114:24	Justice saying this, right?	
114:25	A. That's what it says.	
115:1	Q. Yeah.	
115:2	It says, "By its own	
115:3	admissions, McKesson reported just 35	
115:4	suspicious customers between 2008 and 2012."	
115:5	Right?	
115:6	A. That's what it says.	
115:7	Q. "According to Mr. Walker,	
115:8	McKesson services approximately 25,000	
115:9	customers daily. If one assumes that	
115:10	McKesson served the same 25,000 customers	
115:11	every day from 2008 to 2009 [sic], then	

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115:12 McKesson identified just .14 percent of its
 115:13 customers as suspicious. Obviously, this
 115:14 miniscule percentage is inflated in that
 115:15 McKesson did not have the same 25 [sic]
 115:16 customers every day from 2008 to 2012."
 115:17 Now, here's my question: Has
 115:18 anybody ever sat down and talked to you --
 115:19 prior to you coming in here and committing to
 115:20 the idea that your responsibility was to
 115:21 report suspicious customers, had anybody ever
 115:22 reported to you that the Department of
 115:23 Justice says that is nonsense? Had they told
 115:24 you that?
 115:25 A. That reporting the suspicious
 116:1 customers to the field office was nonsense?
 116:2 Q. To anybody. To anybody.
 116:3 A. No.
 116:4 Q. Okay. Nobody ever told you
 116:5 that?
 116:6 A. No.

118:1 - 119:13

Gustin, Dave 08-17-2018 (00:01:09)

DG04.74

118:1 "McKesson-Livonia remained
 118:2 silent even after it supplied 26 pharmacies
 118:3 that were utilized in a drug trafficking
 118:4 conspiracy."
 118:5 Now, we're talking about
 118:6 Livonia. This is the area within your DRA,
 118:7 correct?
 118:8 A. Yes.
 118:9 Q. All right. So you knew that
 118:10 drugs were being -- that there was a
 118:11 conspiracy of trafficking right there in your
 118:12 DRA, right, in your area?
 118:13 What do you want to call the
 118:14 area? The region?
 118:15 A. Central -- it's North Central
 118:16 region.
 118:17 Q. North Central.
 118:18 Okay. So you knew that in the
 118:19 North Central area that there had been 26

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	<p>118:20 pharmacies that were utilizing drug -- in</p> <p>118:21 drug trafficking conspiracy that had resulted</p> <p>118:22 in the criminal conviction of the owner of</p> <p>118:23 these pharmacies?</p> <p>118:24 A. Yes, I was --</p> <p>118:25 Q. Babubhai Patel. You knew that,</p> <p>119:1 right?</p> <p>119:2 A. I was aware of this incident,</p> <p>119:3 yes.</p> <p>119:4 Q. And this is the area that you</p> <p>119:5 were in charge of as a DRA, correct?</p> <p>119:6 A. Yes.</p> <p>119:7 Q. And then it says -- did you</p> <p>119:8 know Babu -- Babubhai Patel? Had you met</p> <p>119:9 Mr. Babubhai?</p> <p>119:10 A. Mr. Patel?</p> <p>119:11 Q. Yeah.</p> <p>119:12 A. No. Met him? Not that I</p> <p>119:13 recall.</p>	
119:22 - 119:25	<p>Gustin, Dave 08-17-2018 (00:00:04)</p> <p>119:22 Q. At the time did you know that</p> <p>119:23 they were investigating before they finally</p> <p>119:24 busted him?</p> <p>119:25 A. No.</p>	DG04.75
121:18 - 121:21	<p>Gustin, Dave 08-17-2018 (00:00:05)</p> <p>121:18 Q. You remained silent about drug</p> <p>121:19 trafficking; that's what this says, doesn't</p> <p>121:20 it?</p> <p>121:21 A. It's not true at all.</p>	DG04.76
121:22 - 124:2	<p>Gustin, Dave 08-17-2018 (00:01:38)</p> <p>121:22 Q. It's not true, you're --</p> <p>121:23 A. That I personally remained</p> <p>121:24 silent? No, because, again, reporting</p> <p>121:25 suspicious orders was never under my purview.</p> <p>122:1 Q. Well, who remained silent with</p> <p>122:2 McKesson? Because this is saying -- I'll</p> <p>122:3 read it again.</p> <p>122:4 "McKesson-Livonia remained</p> <p>122:5 silent even as it supplied 26 pharmacies that</p> <p>122:6 were utilized in drug trafficking conspiracy</p>	DG04.77

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122:7 that resulted in the criminal conviction of
122:8 the owner of these pharmacies." And that's
122:9 Babubhai Patel and dozens of other
122:10 participants.
122:11 I mean, did I read that right?
122:12 Because if I didn't read it,
122:13 you can correct me. But that is what the
122:14 Department of Justice is saying about the
122:15 very place where you were the DRA in charge,
122:16 correct?
122:17 A. About the place that I was in
122:18 charge or the Livonia DC? That's what it
122:19 says.
122:20 Q. That's what it says.
122:21 And you just disagree with it,
122:22 right?
122:23 A. I disagree that I -- you kept
122:24 characterizing it that "I."
122:25 Q. Well, how about McKesson? You
123:1 worked for McKesson.
123:2 A. Okay. Then that's where you
123:3 would have to get a response from McKesson.
123:4 Q. Well, sir, you worked for
123:5 McKesson as the DRA. You were the guy in
123:6 charge for Livonia --
123:7 A. Yes.
123:8 Q. -- on the DRA?
123:9 A. Yes, and I'm happy to account
123:10 for any -- that was in my area of
123:11 responsibility.
123:12 Q. Well, then account for this.
123:13 A. That was not --
123:14 Q. Account for this. This says
123:15 that as a DRA -- or McKesson you remained
123:16 silent.
123:17 A. No, that's not what it says.
123:18 Does it say DRA up there somewhere?
123:19 Q. Well, let me read it again.
123:20 "McKesson" -- who did you work
123:21 for?

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	123:22 A. Again, I -- it says McKesson.	
	123:23 Q. Who did you work for?	
	123:24 A. I worked for McKesson.	
	123:25 Q. Well, you're representing	
	124:1 McKesson in Livonia as a DRA, right?	
	124:2 A. As a field DRA.	
124:6 - 124:11	Gustin, Dave 08-17-2018 (00:00:14)	DG04.78
	124:6 Q. During the very period that	
	124:7 they're saying that there were 26 pharmacies	
	124:8 that were utilized in drug trafficking	
	124:9 conspiracy; that's when you were there, true?	
	124:10 A. That's when I was DRA over the	
	124:11 North Central region, yes.	
125:14 - 126:6	Gustin, Dave 08-17-2018 (00:00:41)	DG04.79
	125:14 Q. All right. But you didn't do	
	125:15 your job here.	
	125:16 If you -- if you remained	
	125:17 silent while 26 pharmacies were utilized in	
	125:18 drug trafficking, then you were not doing	
	125:19 your job, were you? That was taking place	
	125:20 under your nose as a DRA?	
	125:21 A. That happened while I was with	
	125:22 the DR -- while I was the DRA, but, again --	
	125:23 again, it was not my responsibility to report	
	125:24 suspicious orders, and that's what that is	
	125:25 saying.	
	126:1 Q. Well, okay. Let's move from	
	126:2 suspicious orders.	
	126:3 Tell me when you first reported	
	126:4 Baba -- Babubhai Patel as a suspicious	
	126:5 customer. When did you send that in?	
	126:6 A. I never did.	
126:7 - 126:15	Gustin, Dave 08-17-2018 (00:00:25)	DG04.80
	126:7 Q. Right, you never did.	
	126:8 And you never reported	
	126:9 suspicious orders. You told me that, true?	
	126:10 You never reported suspicious	
	126:11 orders even though -- for this Livonia, even	
	126:12 though there were 26 pharmacies that were	
	126:13 involved in drug trafficking narcotics that	

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126:17 - 126:18	<p>126:14 your company sold. You never reported that, 126:15 did you, yes or no?</p> <p>Gustin, Dave 08-17-2018 (00:00:02)</p> <p>126:17 THE WITNESS: I couldn't report 126:18 that. I didn't know that.</p>	DG04.81
127:4 - 127:17	<p>Gustin, Dave 08-17-2018 (00:00:44)</p> <p>127:4 "McKesson's system to disclose 127:5 suspicious orders of controlled substances 127:6 identified none, even when one of Patel's 127:7 pharmacies, Preferred Care, for example, went 127:8 on ordering less than 4,000 dosage units of 127:9 hydrocodone products in March and April 127:10 of 2012 [sic] to regularly ordering 16,000 127:11 dosage units a month in August 2010." 127:12 You didn't think that was 127:13 suspicious when it made a jump like that? 127:14 A. Because it was 16,000 doses? 127:15 Q. Yeah. 127:16 A. It probably didn't come up to 127:17 catch anybody's attention.</p>	DG04.82
129:14 - 130:12	<p>Gustin, Dave 08-17-2018 (00:01:01)</p> <p>129:14 It says, "McKesson's system to 129:15 disclose suspicious orders of controlled 129:16 substances," we're talking about narcotics 129:17 here, right? Narcotics? 129:18 A. Yes. 129:19 Q. Okay. "Identified none even 129:20 when one of Patel's pharmacies, Preferred 129:21 Care, for example, went from ordering less 129:22 than 4,000 dosage of hydrocodone products in 129:23 March and April of 2010 to regularly ordering 129:24 16,000 dosage units a month in 2010, and then 129:25 to regularly ordering more than 20,000 dosage 130:1 units a month in 2011." 130:2 I want to be clear about 130:3 something: You were the person that would 130:4 have approved those thresholds, yes or no? 130:5 A. At that time? Yes. 130:6 Q. Yes. 130:7 A. Yes.</p>	DG04.83

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130:8	Q. Okay. So we're talking about	
130:9	your conduct right here in those -- in that	
130:10	line. That's what Dave Gustin approved,	
130:11	true?	
130:12	A. I would think so.	
130:17 - 131:12	Gustin, Dave 08-17-2018 (00:00:46)	DG04.84
130:17	Q. You had actually visited	
130:18	Mr. Patel's facility, right?	
130:19	A. Probably.	
130:20	Q. Yeah.	
130:21	MS. MOORE: Gustin 195.	
130:22	(McKesson-Gustin Exhibit 195	
130:23	marked for identification.)	
130:24	QUESTIONS BY MR. PAPANTONIO:	
130:25	Q. Just so the jury can see what	
131:1	Mr. Patel's facility looks like. It says --	
131:2	and this is -- you saw this article, I'm	
131:3	sure. This is "Health Care Fraud Enterprise	
131:4	Dismantled. Ringleader Operated Multiple	
131:5	Pharmacies."	
131:6	Do you see that?	
131:7	This is your customer we're	
131:8	talking about here. While you were the DRA,	
131:9	this is your -- at that particular	
131:10	facility -- this is an FBI press release.	
131:11	Had anyone shown this to you?	
131:12	A. No.	
131:22 - 132:1	Gustin, Dave 08-17-2018 (00:00:08)	DG04.85
131:22	Q. And you visited all 26, right?	
131:23	A. No, not that I know of.	
131:24	Q. Not --	
131:25	A. I mean, there's not a reason to	
132:1	say that, that I know of.	
132:6 - 132:16	Gustin, Dave 08-17-2018 (00:00:30)	DG04.86
132:6	Q. How many facilities do you	
132:7	recall actually going and taking a look at	
132:8	before the Department of Justice convicted	
132:9	him of trafficking narcotics while you were	
132:10	the DRA?	
132:11	A. There's no way to answer that.	

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132:12 I don't know. I visited hundreds and maybe
 132:13 thousands of customers over five years in 15
 132:14 states. I can't recall which of the small
 132:15 chain -- if it was a small chain, that I
 132:16 visited.

133:5 - 134:4

Gustin, Dave 08-17-2018 (00:01:00)

DG04.87

133:5 Let's look at page 2. You see
 133:6 that first paragraph? You see the last line
 133:7 in that first paragraph? It says, "We also
 133:8 uncovered the illegal diversion of controlled
 133:9 substances to people that didn't medically
 133:10 need them as well as billings to government
 133:11 and private insurers for millions of dollars
 133:12 of noncontrolled medications that were never
 133:13 dispensed to patients."
 133:14 And then it goes on to say, "In
 133:15 August 2011 and March of 2013, a total of 39
 133:16 individuals, including ringleader" --
 133:17 How does he say his name there?
 133:18 You met him, right?
 133:19 A. No, I don't think I did. And
 133:20 if I did, I would have called him Mr. Patel.
 133:21 I can't say that name either.
 133:22 Q. Well, okay. Let me get this
 133:23 right.
 133:24 He owns 26 facilities that you
 133:25 are supplying through McKesson as a DRA, and
 134:1 you never met this man; is that your
 134:2 testimony? Is that your testimony?
 134:3 A. Yeah, I don't remember meeting
 134:4 him.

134:22 - 135:15

Gustin, Dave 08-17-2018 (00:00:51)

DG04.88

134:22 Q. And it says, "August '11 and
 134:23 2013, a total of 39 individuals, including
 134:24 ringleader, Patel, were indicted on various
 134:25 federal healthcare fraud and drug charges
 135:1 related to this scheme, which ran from 2006
 135:2 to 2011."
 135:3 And you started in 2008, right?
 135:4 A. Yes, late May.

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	<p>135:5 Q. It says -- next paragraph down</p> <p>135:6 here, it says, "He and his associates</p> <p>135:7 recruited a number of pharmacists, mostly</p> <p>135:8 from overseas, to staff his pharmacies and</p> <p>135:9 help facilitate this scheme to defraud</p> <p>135:10 government and private insurers."</p> <p>135:11 So you know now that the guy</p> <p>135:12 you were selling narcotics to was actually</p> <p>135:13 defrauding the government, and he was</p> <p>135:14 actually defrauding insurance companies,</p> <p>135:15 right?</p>	
135:19 - 135:22	Gustin, Dave 08-17-2018 (00:00:06)	DG04.89
	<p>135:19 Q. That's what it says?</p> <p>135:20 A. I do know that -- I did know</p> <p>135:21 that, after the stories, the newspaper</p> <p>135:22 reports came out, I read them.</p>	
136:7 - 136:21	Gustin, Dave 08-17-2018 (00:00:32)	DG04.90
	<p>136:7 Q. Well, then how did you miss the</p> <p>136:8 fact that there was a drug ring trafficking</p> <p>136:9 your -- McKesson narcotics right there in</p> <p>136:10 this area? How did you miss that if your</p> <p>136:11 system worked so well?</p> <p>136:12 A. Well, in the first place, most</p> <p>136:13 of, I think, that action against him was the</p> <p>136:14 result of the fraud, the millions or whatever</p> <p>136:15 dollars worth of fraud that took place, and</p> <p>136:16 there would be no visibility for us to see</p> <p>136:17 that because we would have to have patients'</p> <p>136:18 names in order to see that.</p> <p>136:19 And, of course, that would be a</p> <p>136:20 violation of HIPAA, so I couldn't see those.</p> <p>136:21 Q. That's not what this says.</p>	
136:25 - 137:20	Gustin, Dave 08-17-2018 (00:00:48)	DG04.91
	<p>136:25 Q. That's not what this says.</p> <p>137:1 This says that -- wait a second. This</p> <p>137:2 says -- this letter that we're talking about</p> <p>137:3 says -- you're giving examples of where you</p> <p>137:4 agreed to thresholds that went from 4,000 to</p> <p>137:5 20,000.</p> <p>137:6 That's what the Department of</p>	

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	<p>137:7 Justice is complaining about in their letter, 137:8 right, that you, Dave Gustin, approved this 137:9 ringleader, drug trafficker, by taking him 137:10 from 4,000 to 20,000? 137:11 That's what the letter says, 137:12 the DEA -- the Department of Justice, that's 137:13 what they say, right? 137:14 A. First to clarify, you said 137:15 "Dave Gustin," and my name is not in here, 137:16 but as DRA I would have approved threshold 137:17 changes for customers, and I'm assuming that 137:18 I did in this case, but I would have to see 137:19 the associated documentation to know for 137:20 sure.</p>	
138:10 - 138:22	<p>Gustin, Dave 08-17-2018 (00:00:22) 138:10 Q. It says, "Patel and his 138:11 associates offered kickbacks and bribes to 138:12 doctors willing to write medically 138:13 unnecessary prescriptions, home healthcare 138:14 referrals and bills for other services to 138:15 Medicare, Medicaid and private insurers." 138:16 Now, sir, do you know who pays 138:17 for Medicare and Medicaid? Are you aware of 138:18 that? 138:19 Taxpayers do that, don't they? 138:20 A. Yes, I do. 138:21 Q. Right? 138:22 A. Yes.</p>	DG04.92
139:10 - 139:19	<p>Gustin, Dave 08-17-2018 (00:00:25) 139:10 Q. "He also provided kickbacks to 139:11 bribes to patient recruiters, individuals 139:12 hired to go and find patients willing to 139:13 share their insurance information as well as 139:14 other inducements." 139:15 And all of that is going on 139:16 while you are DRA for this district, right? 139:17 This is all happening right there in your 139:18 district, Livonia? 139:19 A. It was happening at that time.</p>	DG04.93
140:25 - 141:10	<p>Gustin, Dave 08-17-2018 (00:00:26)</p>	DG04.94

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	140:25 Q. It says, "Worse, hydrocodone 141:1 products constituted more than 70 percent of 141:2 the controlled substances that Preferred 141:3 Pharmacy was ordering, an obvious indicia of 141:4 diversion." 141:5 You would agree that when you 141:6 see a 70 percent high volume, that that is 141:7 what they call a red flag in your business, 141:8 right? 141:9 A. That would have been a number 141:10 of interest to me, yes.	
141:16 - 141:24	Gustin, Dave 08-17-2018 (00:00:13) 141:16 Q. You would agree that would be 141:17 what your -- there's a term of art in this 141:18 business where you were the DRA; it's called 141:19 a red flag? 141:20 A. Okay. 141:21 Q. Right? 141:22 A. I assume so. I didn't use that 141:23 term. I said that would have been a number 141:24 of interest to me.	DG04.95
142:25 - 143:2	Gustin, Dave 08-17-2018 (00:00:03) 142:25 This is the first time you've 143:1 seen this document, right? 143:2 A. Yes.	DG04.96
143:4 - 143:20	Gustin, Dave 08-17-2018 (00:00:35) 143:4 "Of course McKesson-Livonia's 143:5 failure to detect suspicious orders was not 143:6 confined to pharmacies in the Patel criminal 143:7 conspiracy. McKesson-Livonia saw orders of 143:8 hydrocodone from the People's Pharmacy." 143:9 That was also your area, wasn't 143:10 it? 143:11 A. In Detroit? 143:12 Q. Yeah. 143:13 A. Yes. 143:14 Q. Okay. So we talked about 143:15 Livonia so far, that was your DRA area. 143:16 Now we're moving on to Detroit, 143:17 People's Pharmacy. That's your area, right?	DG04.97

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	143:18 A. DRA, true?	
	143:19 A. Where? I didn't hear that.	
	143:20 Detroit is mine.	
143:23 - 144:20	Gustin, Dave 08-17-2018 (00:00:37)	DG04.98
	143:23 Q. Yeah. People's Pharmacy -- you	
	143:24 know what People's Pharmacy is, right?	
	143:25 A. I don't remember the pharmacy.	
	144:1 Q. Sir, you actually are the	
	144:2 person that approved their threshold?	
	144:3 A. Okay.	
	144:4 Q. Did you know that?	
	144:5 A. As you pointed out, I had about	
	144:6 13,000 pharmacies under my --	
	144:7 Q. So you had a lot -- you had a	
	144:8 lot of things to take care of, didn't you?	
	144:9 A. I'm just saying that among all	
	144:10 of those pharmacies, I don't necessarily	
	144:11 remember one called People's Pharmacy.	
	144:12 Q. Could you have used some help	
	144:13 in your job? I.	
	144:14 Mean, it sounds like you're	
	144:15 already -- that's a lot of -- could you have	
	144:16 used other people doing what you were doing	
	144:17 in your job, yes or no? This is your time to	
	144:18 tell us.	
	144:19 A. The DEA employs like 10,700, I	
	144:20 would like to have had some of them.	
144:21 - 144:24	Gustin, Dave 08-17-2018 (00:00:03)	DG04.99
	144:21 Q. You'd like to have them working	
	144:22 with you, wouldn't you?	
	144:23 A. I think anybody always wants	
	144:24 more help.	
145:1 - 145:18	Gustin, Dave 08-17-2018 (00:00:32)	DG04.100
	145:1 You want more help, and you	
	145:2 understood -- you understand that your	
	145:3 company that you're working for, McKesson, is	
	145:4 the fifth largest -- the fifth largest	
	145:5 revenue producer in America. Had anybody	
	145:6 ever told you that?	
	145:7 A. No, I never knew that.	

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	145:8 Q. Did you know they have 78,000 145:9 employees that work for them? 145:10 A. I didn't know that number, 145:11 either. 145:12 Q. Did you know that in this year 145:13 that we're talking about, that they made 145:14 \$196 billion in revenue? 145:15 A. No. 145:16 Q. All right. Did you ever ask 145:17 for more help? 145:18 A. No.	
145:19 - 146:4	Gustin, Dave 08-17-2018 (00:00:20) 145:19 Q. They certainly -- there's other 145:20 people -- you could have used more help with 145:21 what you're doing is all I'm trying to say. 145:22 It would have worked better if Dave Gustin 145:23 had people helping him, right? 145:24 A. It would be a 145:25 mischaracterization to say I didn't have help 146:1 though. I had other eyes out there, 40-some 146:2 salespeople for one, people in every 146:3 distribution center for another, the DCMs for 146:4 each of the DCs.	DG04.101
147:5 - 147:11	Gustin, Dave 08-17-2018 (00:00:13) 147:5 But now we're talking about 147:6 People's Pharmacy, and you agree that was in 147:7 Detroit, and that was another one of your 147:8 areas as DRA, right? 147:9 A. I agree that's what it says, 147:10 that People's Pharmacy in Detroit, so I 147:11 assume it's correct.	DG04.102
147:12 - 147:24	Gustin, Dave 08-17-2018 (00:00:33) 147:12 Q. "People's Pharmacy in Detroit 147:13 rise from 10,000 dosage units a month when it 147:14 first came online to 2010 to double and then 147:15 triple so that it was ordering more than 147:16 30,000 units a month by the end of the year." 147:17 Right? 147:18 A. That's what it says. 147:19 Q. And they -- obviously the	DG04.103

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147:20 Department of Justice and DEA wrote that in
 147:21 this report as being something that was an
 147:22 indicator that you weren't doing your job as
 147:23 a DRA because these numbers are skyrocketing,
 147:24 aren't they?

148:2 - 148:3

Gustin, Dave 08-17-2018 (00:00:02)

DG04.104

148:2 Q. That's why that's in there; do
 148:3 you understand that?

148:5 - 149:14

Gustin, Dave 08-17-2018 (00:01:26)

DG04.105

148:5 THE WITNESS: I understand it's
 148:6 in there.

148:7 QUESTIONS BY MR. PAPANTONIO:

148:8 Q. Yeah. And who was the guy in
 148:9 charge as the DRA? You.

148:10 A. This was under my purview at
 148:11 that time.

148:12 Q. And you were the person making
 148:13 these threshold approvals, right?

148:14 A. I made threshold changes and
 148:15 had final approval during that time period,
 148:16 yes.

148:17 Q. So in Preferred Care, you took
 148:18 them from 4,000 to 20,000, for 70 percent
 148:19 controlled substance increase. We already
 148:20 saw that, right?

148:21 A. That's what it says.

148:22 Q. And now People's Pharmacy --
 148:23 People's Pharmacy, that you took them from
 148:24 10,000 to 30,000 units a month.

148:25 Do you see that?

149:1 A. Yes.

149:2 Q. Then it says -- read this with
 149:3 me. Right after that, it says,

149:4 "McKesson-Livonia -- McKesson-Livonia's only
 149:5 action was to regularly raise thresholds to
 149:6 permit this, offering little more than 'due
 149:7 to increased business' as the reason why the
 149:8 thresholds needed to be doubled and tripled."

149:9 They're talking about your

149:10 performance there. You were the person that

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149:11 - 150:6	<p>149:11 allowed -- you were the person at 149:12 McKesson-Livonia that allowed these things -- 149:13 these orders to rise from double and triple 149:14 due to increase in business.</p> <p>Gustin, Dave 08-17-2018 (00:00:23)</p> <p>149:19 Q. You would agree that increase 149:20 in business is not a legitimate reason to 149:21 raise a threshold. You understand that, 149:22 right?</p> <p>149:23 A. I don't think that's true.</p> <p>149:24 Q. Have you seen the documents 149:25 that direct you -- that say that that is not 150:1 a reason to raise thresholds? Is this the 150:2 first time you've ever heard that?</p> <p>150:3 A. In and of itself?</p> <p>150:4 Q. Yeah.</p> <p>150:5 A. I don't know what documents 150:6 you're talking about.</p>	DG04.106
150:23 - 151:14	<p>Gustin, Dave 08-17-2018 (00:00:43)</p> <p>150:23 Yeah, it says, "While 150:24 McKesson-Livonia was doing so, Michigan 150:25 Pharmacy Board inspectors, who subsequently 151:1 suspended the pharmacist's license, were able 151:2 to watch from the parking lot as drivers 151:3 would drop off multiple patients to pick up 151:4 prescriptions, diversion so obvious the 151:5 pharmacist readily admitted misconduct to the 151:6 investigators when confronted." 151:7 Now, was this -- tell -- did 151:8 you report this -- you told me that your job 151:9 was to report suspicious customers. 151:10 Did you report this pharmacist 151:11 as a suspicious customer? We didn't see 151:12 it --</p> <p>151:13 A. Again, which part -- which 151:14 pharmacy are we talking about?</p>	DG04.107
151:16 - 152:21	<p>Gustin, Dave 08-17-2018 (00:01:00)</p> <p>151:16 THE WITNESS: Is this still 151:17 People? 151:18 QUESTIONS BY MR. PAPANTONIO:</p>	DG04.108

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	151:19 Q. Yeah. Yeah.	
	151:20 A. I don't remember any action	
	151:21 about People's one way or another.	
	151:22 Q. Right.	
	151:23 But here they're saying it was	
	151:24 "so obvious that the Michigan Board of	
	151:25 Pharmacy inspectors were able to watch from	
	152:1 the parking lot as drivers would drop off	
	152:2 multiple patients to pick up prescriptions,	
	152:3 diversion so obvious that the pharmacist	
	152:4 was -- the pharmacist readily admitted	
	152:5 misconduct to investigators when confronted."	
	152:6 Right? That's what that says?	
	152:7 A. That's what that says.	
	152:8 Q. Did you ever sit down there in	
	152:9 the parking lot and see all this going on?	
	152:10 A. I don't know. I sat in many	
	152:11 parking lots. I don't know if I sat in this	
	152:12 one during that kind of a time. I assume if	
	152:13 I had seen something like that and had been	
	152:14 in that parking lot, it would have --	
	152:15 Q. And if your company had more	
	152:16 employees covering this area, it might have	
	152:17 been caught, right?	
	152:18 Had McKesson spent some of that	
	152:19 \$196 billion and hired some more people to	
	152:20 do -- to help you with your job, it might	
	152:21 have been caught, right?	
152:23 - 152:24	Gustin, Dave 08-17-2018 (00:00:02)	DG04.109
	152:23 THE WITNESS: I have no opinion	
	152:24 about that.	
154:18 - 155:5	Gustin, Dave 08-17-2018 (00:00:32)	DG04.110
	154:18 It says, "McKesson's systemic	
	154:19 failures were also evident at its	
	154:20 distribution center at 3000 Kenskill Avenue,	
	154:21 Washington Court, Ohio."	
	154:22 And again, that's your DRA	
	154:23 responsibility, as you told us, right?	
	154:24 A. Yes, it was.	
	154:25 Q. "Here again, McKesson did not	

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155:12 - 155:25	<p>155:1 report any orders as suspicious for years 155:2 after the 2008 settlement with the DOJ and 155:3 the DEA." 155:4 Right? 155:5 A. That's what it says.</p> <p>Gustin, Dave 08-17-2018 (00:00:36)</p> <p>155:12 Q. "When DEA began to investigate 155:13 this silence, McKesson's regional director of 155:14 regulatory affairs told DEA investigators 155:15 that he did not know what a suspicious order 155:16 was and protested that the DEA had not 155:17 adequately defined the term." 155:18 Did you really tell the DEA 155:19 that, that they had not defined what a 155:20 suspicious order is in -- as late as -- as 155:21 2010 here? 155:22 A. In a conversation with Jeff 155:23 Connors, I asked him to define suspicious 155:24 orders, the way that he saw it, and he 155:25 refused to do so.</p>	DG04.111
156:12 - 156:22	<p>Gustin, Dave 08-17-2018 (00:00:31)</p> <p>156:12 It says, "McKesson's inability 156:13 to instill a culture of compliance, even 156:14 within its compliance operations, may explain 156:15 why McKesson WCH" -- which is Washington 156:16 Court House -- "did not report anything 156:17 suspicious about Community Drug of 156:18 Manchester, Kentucky, a pharmacy located in a 156:19 town of less than 1,000 adult residents." 156:20 Now, were you also in charge of 156:21 Manchester, Kentucky? 156:22 A. Yes.</p>	DG04.112
158:3 - 158:9	<p>Gustin, Dave 08-17-2018 (00:00:23)</p> <p>158:3 Q. And there it says, "A 50,000 158:4 dosage units of oxycodone products on a 158:5 monthly basis in 2011." 158:6 You were giving Community Drugs 158:7 in Manchester, Kentucky, 50,000 units of 158:8 oxycodone products on a monthly basis in 2011 158:9 according to this investigation, correct?</p>	DG04.113

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158:12 - 158:25	Gustin, Dave 08-17-2018 (00:00:25) 158:12 THE WITNESS: I don't 158:13 remember -- I don't remember that 158:14 number at all. 158:15 QUESTIONS BY MR. PAPANTONIO: 158:16 Q. Well, what -- okay. Well, you 158:17 think the DEA's lying about that? This is 158:18 your opportunity now. If you believe the 158:19 government is lying about all this and 158:20 they're trying to say something wrong, you 158:21 need to tell the jury about it right now. 158:22 A. I'm just saying I have no 158:23 remembrance of that number, and I have no 158:24 idea where they came up with that number. I 158:25 do remember Community Drug of Manchester.	DG04.114
159:25 - 160:12	Gustin, Dave 08-17-2018 (00:00:29) 159:25 Okay. You knew, sir, that 160:1 Community Drug was under investigation by the 160:2 Kentucky Board of Pharmacy before -- and you 160:3 continued selling drugs while that was going 160:4 on, right? 160:5 A. I don't know that that's true. 160:6 Q. Well, all right. Let's show 160:7 him -- 160:8 A. I do know that I reported them 160:9 to the DEA, and they ended up taking action 160:10 against them. And I know that I got a 160:11 telephone call from the DEA basically 160:12 congratulating me and asking me how I knew.	DG04.115
163:9 - 164:18	Gustin, Dave 08-17-2018 (00:01:23) 163:9 Q. Isn't that exactly what you 163:10 did; you sold them less, but you continued 163:11 selling them drugs even after the Board of 163:12 Pharmacy had them under investigation, yes? 163:13 A. The Board of Pharmacy -- in 163:14 another part of this letter it says that they 163:15 advised us to sell standard amounts. 163:16 Q. So you continued selling drugs 163:17 to them after they were under investigation, 163:18 yes or no?	DG04.318

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163:19	A. Per the direction of the Board	
163:20	of Pharmacy, we did whatever -- well, we took	
163:21	whatever action we took. I can't tell	
163:22	looking at this exactly what that was.	
163:23	Q. And you didn't tell the DEA	
163:24	about this, did you?	
163:25	A. Yeah, after we got to the point	
164:1	where we were cutting them off, and we	
164:2	weren't doing business with them anymore, I	
164:3	told the DEA, and I told them --	
164:4	Q. You told them after you knew	
164:5	they were under investigation, sir, didn't	
164:6	you? That's when you told the DEA about it,	
164:7	after you knew they were under investigation?	
164:8	A. I told them after I continued	
164:9	my investigation, and then we took the action	
164:10	and closed them down, and that's when I told	
164:11	the DEA.	
164:12	Q. You had an investigation going,	
164:13	is that what you're telling me? Is that your	
164:14	testimony here, that Dave Gustin had an	
164:15	investigation going of Community Drug? Is	
164:16	that what you're telling me, yes?	
164:17	A. Yes, I was looking into the	
164:18	Manchester Community Drug, the pharmacy.	
166:12 - 166:13	Gustin, Dave 08-17-2018 (00:00:02)	DG04.118
	166:12 THE WITNESS: If we could	
	166:13 justify doing so.	
166:15 - 166:18	Gustin, Dave 08-17-2018 (00:00:04)	DG04.119
	166:15 Q. Huh?	
	166:16 A. I didn't say we were going to.	
	166:17 I said if we could justify doing so, that	
	166:18 meant --	
167:4 - 167:8	Gustin, Dave 08-17-2018 (00:00:06)	DG04.120
	167:4 Q. Did you have any idea that the	
	167:5 Department of Justice was looking at them,	
	167:6 too?	
	167:7 A. I had no idea at that time that	
	167:8 anybody was looking at them other than me.	
168:16 - 168:24	Gustin, Dave 08-17-2018 (00:00:19)	DG04.121

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	<p>168:16 Are you the guy that said we're</p> <p>168:17 going to bump -- we're going to bump you up</p> <p>168:18 as soon as you could justify doing so?</p> <p>168:19 A. Meaning at the end of the</p> <p>168:20 investigation.</p> <p>168:21 Q. Right.</p> <p>168:22 A. If the right circumstances</p> <p>168:23 existed, that we would, and if not, we would</p> <p>168:24 make a different decision.</p>	
170:9 - 170:12	<p>Gustin, Dave 08-17-2018 (00:00:10)</p> <p>170:9 MS. BROWNING: Gustin 136.</p> <p>170:10 QUESTIONS BY MR. PAPANTONIO:</p> <p>170:11 Q. Look at page 89, it's the last</p> <p>170:12 page there.</p>	DG04.122
170:16 - 171:11	<p>Gustin, Dave 08-17-2018 (00:00:53)</p> <p>170:16 Q. It says, "Dave Gustin" at the</p> <p>170:17 top, right?</p> <p>170:18 See the date there, it's</p> <p>170:19 August 23, 2012, right?</p> <p>170:20 A. Okay.</p> <p>170:21 Q. It says, "Kevin, I am ready to</p> <p>170:22 recommend that we restore a portion of the</p> <p>170:23 oxy and hydro that was their old threshold.</p> <p>170:24 Maybe take oxy to 16,000 and hydro to -- and</p> <p>170:25 keep oxy 30s at 5,000 so it can stay below</p> <p>171:1 the one-third of the percentage. Thoughts?"</p> <p>171:2 Now, here you're trying to</p> <p>171:3 determine how much you can continue selling</p> <p>171:4 this -- this Community Drug where there are</p> <p>171:5 1,000 people, right?</p> <p>171:6 You're trying to determine how</p> <p>171:7 many drugs can I continue selling these</p> <p>171:8 people after they've already been busted for</p> <p>171:9 selling too many drugs, right?</p> <p>171:10 A. I can't speak to the timing on</p> <p>171:11 things, what I knew or didn't know or...</p>	DG04.123
174:17 - 174:24	<p>Gustin, Dave 08-17-2018 (00:00:24)</p> <p>174:17 Q. And you know -- you know, sir,</p> <p>174:18 don't you that you actually -- you actually</p> <p>174:19 were -- a part of your job was to police the</p>	DG04.124

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174:20	distribution of these drugs from distributor	
174:21	to pharmacy, part of your job to avoid	
174:22	diversion was to be part of the policing of	
174:23	that. You knew that, right? Did you not	
174:24	know that?	
175:2 - 175:25	Gustin, Dave 08-17-2018 (00:00:49)	DG04.125
175:2	THE WITNESS: Part of our job	
175:3	was to --	
175:4	QUESTIONS BY MR. PAPANTONIO:	
175:5	Q. Police and make sure that there	
175:6	weren't too many drugs sold and used for	
175:7	diversion?	
175:8	A. To vet the accounts for -- yes.	
175:9	Q. You would agree with that then.	
175:10	It says, "I have an e-mail in	
175:11	our regulatory team" -- let's see. "I have	
175:12	an e-mail in to our regulatory team to find	
175:13	out exactly what they need to bump up your	
175:14	thresholds again."	
175:15	Right? Isn't that what that	
175:16	says?	
175:17	A. Yes.	
175:18	Q. "Bump up your thresholds."	
175:19	And that's the same words that	
175:20	were used in the -- in this -- in Department	
175:21	of Justice report that -- where they say that	
175:22	it continued to supply controlled	
175:23	substances -- their, Community Drug -- and	
175:24	that they would -- McKesson would bump up the	
175:25	threshold as soon as they could.	
176:4 - 176:17	Gustin, Dave 08-17-2018 (00:00:26)	DG04.126
176:4	Q. Right?	
176:5	A. I see that what it says here.	
176:6	Q. Here's the word right here	
176:7	again, "we're going to bump it up."	
176:8	Do you think it's prudent to	
176:9	bump up thresholds where you have search	
176:10	warrants -- you have search warrants and	
176:11	criminal convictions taking place for a --	
176:12	one of your customers? You want to bump up	

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176:13 their orders?

176:14 A. I don't know that -- that

176:15 that's what happened here --

176:16 Q. Well, let's read on. Okay?

176:17 A. -- by the timing of it.

177:5 - 178:3

Gustin, Dave 08-17-2018 (00:00:55)

DG04.127

177:5 Q. Same place we were. "Even

177:6 after McKesson WCH was aware that this

177:7 company was under investigation, it continued

177:8 to supply with controlled substance while

177:9 apologizing for having to reduce thresholds,

177:10 and promising to bump up those thresholds as

177:11 soon as they could justify doing so. In

177:12 September 2012, federal and state law

177:13 enforcement officers executed a search

177:14 warrant on Community Drug as part of an

177:15 investigation that ultimately resulted in the

177:16 criminal conviction of the lead pharmacist

177:17 and his wife."

177:18 Isn't that exactly who you were

177:19 writing to? That letter was to -- those were

177:20 the people who were involved in that letter?

177:21 A. I was not writing the letter.

177:22 Q. You did -- did you know these

177:23 people?

177:24 A. Know them?

177:25 Q. Yeah. Had you met them?

178:1 A. I don't know that I met them.

178:2 If I did, it might have been once, but I

178:3 don't remember them.

180:20 - 181:3

Gustin, Dave 08-17-2018 (00:00:18)

DG04.128

180:20 Q. Okay. Well, you don't remember

180:21 that they were actually subject to an

180:22 investigation by the pharmacy board and that

180:23 they were issued search warrants. You didn't

180:24 know that, correct?

180:25 A. At the time?

181:1 Q. Yeah.

181:2 A. No. No. I see it now. I see

181:3 it after the fact.

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183:4 - 184:3

Gustin, Dave 08-17-2018 (00:01:06)

DG04.129

183:4 Q. Okay. After the search
 183:5 warrant -- after the search warrant was
 183:6 issued, you continued to sell -- we'll
 183:7 take -- you know they were criminally
 183:8 convicted?
 183:9 A. Yes.
 183:10 Q. Okay. But after the search
 183:11 warrant, McKesson continues to sell narcotic
 183:12 drugs, right?
 183:13 A. Yes.
 183:14 Q. And then it says right here --
 183:15 it says that days after -- on your report
 183:16 right there, take a look at 1443. "Days
 183:17 after that search warrant was executed and
 183:18 covered by local television and news
 183:19 outlets" -- I want to make sure I get this
 183:20 right. I want to see if you're the one that
 183:21 said this.
 183:22 "McKesson WCH contacted
 183:23 Community Drug telling them it would be
 183:24 seeking a pretty sizeable increase in
 183:25 oxycodone and hydrocodone thresholds for the
 184:1 store."
 184:2 After all this, you want to
 184:3 increase thresholds of narcotics, right?

184:7 - 185:10

Gustin, Dave 08-17-2018 (00:00:54)

DG04.130

184:7 Q. That's what it says, doesn't
 184:8 it? Tell me if I'm wrong.
 184:9 A. I just need you to tell me what
 184:10 you mean by "they."
 184:11 Q. This is your facility. You're
 184:12 the DRA. The buck stops you with you. You
 184:13 know that, right?
 184:14 A. Yes, but this is referring to a
 184:15 specific -- it was telling it would seek a
 184:16 pretty sizeable increase. You said "you." I
 184:17 didn't --
 184:18 Q. Did you do that?
 184:19 A. I didn't communicate with them.

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184:20 I made it a point not to communicate with
 184:21 that pharmacy.
 184:22 Q. Well, who did?
 184:23 Somebody from McKesson did.
 184:24 Who is that missing person? Can you guess?
 184:25 A. It could have been Ryan
 185:1 England. It could have been somebody at the
 185:2 DC, but I don't know -- have any way of
 185:3 really knowing who, but I wouldn't be seeking
 185:4 a sizeable -- a sizeable -- I would be
 185:5 entertaining it after being asked.
 185:6 Q. Well, sir, you understand that
 185:7 your company didn't even cut them off -- did
 185:8 not cut off this company after all these
 185:9 things we're talking about right here?
 185:10 A. That's correct.

185:11 - 186:11

Gustin, Dave 08-17-2018 (00:01:11)

DG04.131

185:11 Q. They didn't cut them off until
 185:12 October 2012. Did you know that?
 185:13 A. I didn't remember the exact
 185:14 time, but it seems like we did what we were
 185:15 supposed to do.
 185:16 Q. Did you know that you continued
 185:17 to sell them narcotic drugs even -- after
 185:18 this that we've been talking about, you
 185:19 continued to sell them narcotic drugs all the
 185:20 way up until October 23, 2012, yes or no?
 185:21 A. That's very possible, and I
 185:22 think it's because of in those phone calls
 185:23 that I was talking about to the Board of
 185:24 Pharmacy, phone calls to the DEA, it seems
 185:25 like we were asked at one point in time not
 186:1 to do anything to alert them that they were
 186:2 being looked at, do standard thresholds, but
 186:3 if we cut them off, then it would impact
 186:4 their investigation.
 186:5 So at the time I was engaged in
 186:6 phone calls back and forth to either the DEA
 186:7 or Board of Pharmacy or both, and that's why
 186:8 when this was all said and done, they made a

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186:9 - 186:23	<p>186:9 phone call to me basically wondering how I</p> <p>186:10 knew to tip them off that there was a problem</p> <p>186:11 there.</p> <p>Gustin, Dave 08-17-2018 (00:00:17)</p> <p>186:18 Q. You didn't know for years that</p> <p>186:19 this criminal conduct, that they were</p> <p>186:20 criminally convicted of, had been going on</p> <p>186:21 under your watch as the DRA for WCH? The</p> <p>186:22 whole time that was going on, you didn't know</p> <p>186:23 a thing about it, did you?</p>	DG04.132
187:2 - 187:6	<p>Gustin, Dave 08-17-2018 (00:00:07)</p> <p>187:2 Q. Right?</p> <p>187:3 A. I don't remember everything at</p> <p>187:4 that time, but I can't believe I would know</p> <p>187:5 something was wrong and not do something</p> <p>187:6 about it.</p>	DG04.133
188:6 - 189:17	<p>Gustin, Dave 08-17-2018 (00:01:41)</p> <p>188:6 Q. Next page, it says page 4, on</p> <p>188:7 the big page there, 1443. So it says, "In</p> <p>188:8 that same month, McKesson WCH blind eye for</p> <p>188:9 suspicious ordering -- McKesson WCH blind eye</p> <p>188:10 for suspicious ordering was again apparent</p> <p>188:11 when it set a monthly threshold of 112 [sic]</p> <p>188:12 dosage units of hydrocodone products for</p> <p>188:13 Family Discount Pharmacy, one of the three</p> <p>188:14 pharmacies located in Mount Gay, West</p> <p>188:15 Virginia, with an adult population of less</p> <p>188:16 than 1,500."</p> <p>188:17 Now, is that your Family</p> <p>188:18 Discount Pharmacy, too?</p> <p>188:19 A. The Family Discount Pharmacy --</p> <p>188:20 Q. Yeah.</p> <p>188:21 A. -- one that fell under my</p> <p>188:22 purview? Yes.</p> <p>188:23 Q. Yes.</p> <p>188:24 So we're talking about -- and</p> <p>188:25 you understand you've actually seen the</p> <p>189:1 entire -- you've seen the Congressional</p> <p>189:2 letter that went out about how Mount Gay,</p> <p>189:3 West Virginia, had been flooded with so many</p>	DG04.134

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189:4 narcotics from McKesson that it actually came
 189:5 down to every man, woman and child in that
 189:6 community would have had a year's supply of
 189:7 narcotics?

189:8 Did you -- do you know anything
 189:9 about that?

189:10 A. I don't remember -- I don't
 189:11 remember hearing that, no.

189:12 Q. All right. But this was your
 189:13 area, wasn't it?

189:14 A. That part of Virginia -- West
 189:15 Virginia, rather?

189:16 Q. Yes.

189:17 A. Yes.

190:2 - 190:15

Gustin, Dave 08-17-2018 (00:00:28)

DG04.135

190:2 Then it goes on to say, "Even
 190:3 when Family Discount Pharmacy exceeded that
 190:4 extraordinary threshold" -- do you see where
 190:5 they use the word "extraordinary"?

190:6 A. I see the word.

190:7 Q. That was a threshold that you
 190:8 set, correct?

190:9 A. Yes, I think so.

190:10 Q. "Making this rural pharmacy one
 190:11 of the top purchasers of hydrocodone in the
 190:12 state. No orders were reported as
 190:13 suspicious."

190:14 Do you see that?

190:15 A. I see that.

191:8 - 192:5

Gustin, Dave 08-17-2018 (00:00:52)

DG04.136

191:8 Q. And then it says, "In
 191:9 March 2014, McKesson's regional director,
 191:10 regulatory affairs" --
 191:11 That would be you, right?

191:12 A. That's about the time that I
 191:13 was withdrawing from the role, so it could
 191:14 have been, or within weeks it could have been
 191:15 Scott.

191:16 Q. -- "affairs visited this
 191:17 pharmacy in person and approved continuing to

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191:18 ship controlled substances to this customer,
 191:19 a decision that was contradicted a week later
 191:20 when a new employee conducted the same
 191:21 on-site review."

191:22 Scott was the new employee,
 191:23 wasn't he?

191:24 A. Yeah, I was working with him at
 191:25 that time.

192:1 Q. So you're the one that up --
 192:2 until that time, you had approved the
 192:3 thresholds for Mount Gay, West Virginia,
 192:4 correct?

192:5 A. Yes.

236:21 - 237:3

Gustin, Dave 08-17-2018 (00:00:22)

DG04.137

236:21 I want to talk to
 236:22 you about -- when you started this morning, I
 236:23 said I was going to cover a letter that you
 236:24 had written. Would you give him 1628?
 236:25 And I may have misread this.

237:1 But you're telling the company in this --
 237:2 let's show him again. You're telling --
 237:3 MS. MOORE: Gustin 194.

237:7 - 238:3

Gustin, Dave 08-17-2018 (00:00:46)

DG04.138

237:7 Q. Do you remember writing the
 237:8 company -- before you look at this, do you
 237:9 remember writing the company trying to
 237:10 explain what your workload was?
 237:11 A. What my work -- I was asked --
 237:12 upon leaving my position, I was asked to
 237:13 describe my workload --
 237:14 Q. Workload?
 237:15 A. -- so that the -- as it turned
 237:16 out, the people that took my place would know
 237:17 what all needed to be done.

237:18 Q. There were multiple people that
 237:19 took your place, right?

237:20 A. That's correct.

237:21 Q. They had to correct -- the job
 237:22 you were doing, they had to actually put
 237:23 multiple people in to handle what you were

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237:24	handling every single day as a DRA; that's a	
237:25	correct statement, isn't it?	
238:1	A. They brought in several people	
238:2	in order to take the program forward after I	
238:3	had resigned the position, yeah.	
239:14 - 240:24	Gustin, Dave 08-17-2018 (00:01:34)	DG04.139
239:14	Q. This is Dave Gustin, and it's	
239:15	2014.	
239:16	When did you leave?	
239:17	This is written 11/13/2014.	
239:18	When did you leave?	
239:19	A. This is 11 -- before that. I	
239:20	don't remember exactly when, but I stopped	
239:21	doing the job as a field DRA sometime earlier	
239:22	in '14, sometime around late spring, I think.	
239:23	Q. It says, "Dave Gustin," at the	
239:24	top, sent 11/13/2014. This is to Krista Peck	
239:25	who's a -- you understand is a lawyer for	
240:1	McKesson, right?	
240:2	A. Yes, I think she was.	
240:3	Q. "I think you'll find this a bit	
240:4	more extensive. I referred my visit guide so	
240:5	I attached" -- now, more extensive was you	
240:6	actually tried to explain to her what your	
240:7	job was, and then they asked you to put it	
240:8	down on paper?	
240:9	A. Yeah. She had asked me like in	
240:10	an e-mail, so I just gave her a rough and	
240:11	then she asked me to take some time and do it	
240:12	as completely as possible.	
240:13	Q. And then the next page is what	
240:14	you call your visit guide, correct?	
240:15	A. Right.	
240:16	Q. And then the next page is .3,	
240:17	let's start with this document right here.	
240:18	Okay.	
240:19	It says, "Different aspects of	
240:20	doing the job, Dave Gustin, DRN -- DRA NC	
240:21	2008 to 2013." That's you, and that was your	
240:22	job that we talked about during those years	

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240:23	as a DRA, correct?	
240:24	A. Yes.	
241:3 - 241:15	Gustin, Dave 08-17-2018 (00:00:49)	DG04.140
241:3	Q. It says, "STARS	
241:4	audits comprised five weeks a year of my	
241:5	time, add to this obligation team meetings."	
241:6	What is the STARS audit?	
241:7	A. A STARS audit was when -- at	
241:8	this level was when a DRA like me would go	
241:9	into a distribution center, and all of the --	
241:10	well, not all, selected regulatory processes	
241:11	that the distribution center was responsible	
241:12	for would be on a questionnaire. That	
241:13	limited questionnaire would cover those	
241:14	particular audit points to make sure that the	
241:15	DC was compliant in those areas.	
243:6 - 244:4	Gustin, Dave 08-17-2018 (00:00:42)	DG04.141
243:6	Q. "There was the omit report	
243:7	showing all the omitted controlled drug	
243:8	orders for their DCs. There was the report	
243:9	for multiple family types for any customers.	
243:10	A. report for customers without family types	
243:11	and some other reports. These reports, in	
243:12	conjunction with keeping up with e-mail,	
243:13	cleaning up the end of the month TCRs and	
243:14	customer loads, would take a couple of days."	
243:15	Do you remember doing that? Do	
243:16	you remember that?	
243:17	A. Which part?	
243:18	Q. All of it.	
243:19	A. Writing this and doing that?	
243:20	Q. No, doing these things you were	
243:21	talking about.	
243:22	A. Yes.	
243:23	Q. How many years did you do it?	
243:24	A. About five years.	
243:25	Q. The whole time you did it by	
244:1	yourself?	
244:2	A. Just my region.	
244:3	Q. Yeah, just for your region.	

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244:22 - 245:6	<p>244:4 A. Yeah.</p> <p>Gustin, Dave 08-17-2018 (00:00:24)</p> <p>244:22 It says, "The early part of the</p> <p>244:23 month was when I would schedule road time</p> <p>244:24 generally used to visit prospective or new</p> <p>244:25 customers or customers that needed TCRs or</p> <p>245:1 presented the need for extra attention beyond</p> <p>245:2 simply the online check."</p> <p>245:3 In other words, you couldn't</p> <p>245:4 just do an online check. You had to get out</p> <p>245:5 there and get amongst them, didn't you?</p> <p>245:6 A. In certain indications, yes.</p>	DG04.142
246:18 - 247:11	<p>Gustin, Dave 08-17-2018 (00:00:53)</p> <p>246:18 It says, "I would contact" --</p> <p>246:19 let's see. It says, "My goal was to get four</p> <p>246:20 visits for the trip, one or two with an</p> <p>246:21 interview, and a couple more drop-by visits</p> <p>246:22 to observe and confirm prior visits to the</p> <p>246:23 store, appearance. I would take pictures,</p> <p>246:24 talk to the PIC, and observe customer flow as</p> <p>246:25 possible. So my schedule would be set for</p> <p>247:1 the next week. The early month workweek</p> <p>247:2 would look something like Monday morning,</p> <p>247:3 catch up any e-mails from the weekend, attend</p> <p>247:4 to my requests, do Internet research on</p> <p>247:5 customers, searches for any topics on the PIC</p> <p>247:6 owner."</p> <p>247:7 In other words, you would</p> <p>247:8 actually go and look -- you actually did</p> <p>247:9 searches on the Internet to see what was</p> <p>247:10 going on with that pharmacy, didn't you?</p> <p>247:11 A. Yes, I did.</p>	DG04.143
249:3 - 250:21	<p>Gustin, Dave 08-17-2018 (00:01:59)</p> <p>249:3 Now, let's continue with what</p> <p>249:4 you were expected to do in your job.</p> <p>249:5 "The early month -- week would</p> <p>249:6 look something like Monday morning catchup,</p> <p>249:7 any e-mail from the weekend, attend to any</p> <p>249:8 requests, do Internet research on customers</p> <p>249:9 that I intend to visit that week. That would</p>	DG04.144

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249:10 be mean looking at the Internet for their
 249:11 license status, do searches for any actions
 249:12 on the PIC or owner, look at business reviews
 249:13 online and sometimes look at Topix on the web
 249:14 to see what is being said, if anything."
 249:15 What is Topix?
 249:16 A. Topix was a chat site that drug
 249:17 users could use. If I could get regionalized
 249:18 on it, I could see if they were making
 249:19 comments like, "Don't bother going to ABC
 249:20 pharmacy because the guy there is a hard case
 249:21 and won't fill anything." Or maybe they
 249:22 might say, "I've had better luck at such and
 249:23 such a pharmacy and so forth." And even
 249:24 though some of these comments you could take
 249:25 with a grain of salt, you could maybe see
 250:1 multiple entries that trended a certain way
 250:2 and gave you certain insights.
 250:3 Q. Let's go on with some more
 250:4 stuff that you were doing.
 250:5 "Tuesday, go to the customer
 250:6 early and log in -- log on the car -- log on
 250:7 in the car in the parking lot, catching up
 250:8 e-mails and observing traffic into and out of
 250:9 the pharmacy. I would get there reasonably
 250:10 early. I usually tried to set my appointment
 250:11 up by mid-morning, then at the appointed
 250:12 time, go in for my meeting. The meeting
 250:13 usually would take an hour or so. I would
 250:14 ask the same questions I always did and
 250:15 only -- and only write anything down if it
 250:16 sounded unusual or was a wrong answer. The
 250:17 questions can be found on the attached visit
 250:18 guide I developed."
 250:19 Okay. You developed your own
 250:20 visit guide, didn't you?
 250:21 A. I did.

251:3 - 251:22

Gustin, Dave 08-17-2018 (00:00:46)

DG04.145

251:3 "Each visit naturally would be
 251:4 nuanced by the particular nature of the

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251:5 account's needs and business type. Once in
 251:6 the car again after the interview, I would
 251:7 fill out the guide on my laptop and write
 251:8 down minimally any facts that were specific
 251:9 to conversations and decisions I was to make.
 251:10 I did not waste time" -- I believe you did
 251:11 not waste time at all.
 251:12 What was your day like? What
 251:13 time would you get up in the morning and what
 251:14 time would you get done?
 251:15 A. It would be a full day, and
 251:16 oftentimes I would be on the road by 7
 251:17 depending on the distance that I needed to
 251:18 cover and stay on the road sometimes for two,
 251:19 three days, and then get back on a Thursday
 251:20 and then try to capsulize my week on Friday
 251:21 so that things would be caught up before
 251:22 going to the weekend.

252:5 - 252:16

Gustin, Dave 08-17-2018 (00:00:34)

DG04.146

252:5 Q. "The next day would find me
 252:6 traveling back towards home going by another
 252:7 customer or two, if possible, taking
 252:8 pictures, stopping in for a visit."
 252:9 Do you know if -- by the way,
 252:10 do you know if your company had private
 252:11 investigators that worked for them? Did they
 252:12 have a security department?
 252:13 A. They had a security or -- yeah,
 252:14 security department. I don't know what all
 252:15 they did, but I would have occasion to touch
 252:16 base with them as a result of an audit point.

252:17 - 252:21

Gustin, Dave 08-17-2018 (00:00:07)

DG04.147

252:17 Q. Do you come -- I didn't ask you
 252:18 this, Mr. Gustin. Do you come from a
 252:19 background of being a private investigator or
 252:20 is that --
 252:21 A. No.

252:22 - 253:22

Gustin, Dave 08-17-2018 (00:01:07)

DG04.148

252:22 Q. Did you start before you came
 252:23 on with them -- had they given you -- had you

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	252:24 had any training as a private investigator?	
	252:25 A. No. I was a Marine, and that's	
	253:1 about the opposite of being an investigator.	
	253:2 And then I was a missionary, and then I came	
	253:3 back from mission field and started working	
	253:4 with McKesson.	
	253:5 Q. Okay. All right. "So the next	
	253:6 day would find me traveling back towards	
	253:7 home, going by another customer or two, if	
	253:8 possible, taking pictures, stopping in for a	
	253:9 visit. I would usually only schedule this	
	253:10 kind of trip once a month. By the time I got	
	253:11 home, I would use Thursday and Friday to	
	253:12 communicate the results of my visit, and that	
	253:13 was generally by e-mails, phone calls, and my	
	253:14 visit guide and/or later in the SharePoint."	
	253:15 What's a SharePoint?	
	253:16 A. I think SharePoint, if I	
	253:17 remember right, was a system where	
	253:18 documentation was entered, and the DCR could	
	253:19 go in and see entries there and either	
	253:20 download information onto it or observe what	
	253:21 someone else in the DC had put on it. It was	
	253:22 just a common shared site.	
255:8 - 255:12	Gustin, Dave 08-17-2018 (00:00:11)	DG04.149
	255:8 There was nothing preventing	
	255:9 McKesson -- preventing McKesson from adding	
	255:10 new employees to help you find this	
	255:11 information where you weren't working these	
	255:12 kind of hours, true?	
255:15 - 255:16	Gustin, Dave 08-17-2018 (00:00:04)	DG04.150
	255:15 THE WITNESS: That's actually a	
	255:16 conclusion that I would hesitate to --	
255:18 - 256:4	Gustin, Dave 08-17-2018 (00:00:31)	DG04.151
	255:18 Q. Well, was there anything that	
	255:19 you're familiar with that prevented -- they	
	255:20 got 78 -- 78,000 employees.	
	255:21 A. Right.	
	255:22 Q. They got 198 -- 190, 80 -- 196	
	255:23 billion revenue. They're the fifth largest	

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255:24 revenue-generating company in the United 255:25 States. Is there something I need to know or 256:1 the jury needs to know that would have 256:2 prevented McKesson from hiring other 256:3 employees to help you for your job? Tell me 256:4 if there is, because I'm missing it.		
256:7 - 256:16	Gustin, Dave 08-17-2018 (00:00:15)	DG04.152
	256:7 THE WITNESS: With all due 256:8 respect, I don't know how I can answer 256:9 that. It's -- 256:10 QUESTIONS BY MR. PAPANTONIO: 256:11 Q. Well, you can answer yes or no. 256:12 Was there something you knew about that I 256:13 don't know? 256:14 A. I don't know about anything -- 256:15 Q. Okay. 256:16 A. -- in that regard.	
257:3 - 257:24	Gustin, Dave 08-17-2018 (00:00:52)	DG04.153
	257:3 Q. All right. So it says, "In the 257:4 later part of the month, usually the 20th on 257:5 or so, I would have very little time for 257:6 anything other than working TCRs and customer 257:7 loads. I would be at my home office desk 257:8 from the time I got up and got my coffee up 257:9 until I shut down something during the 257:10 evening as the end of the month drew near. 257:11 Each TCR and for any nonstandard threshold 257:12 new customer, loads there would be several 257:13 e-mails, some phone calls, Internet research, 257:14 obtaining and scanning scripts, and other 257:15 steps as needed. With the eight DCs for the 257:16 first couple of years, then seven the rest of 257:17 the time" -- what is -- it says you're doing 257:18 all this for eight DCs. 257:19 What does that mean? 257:20 A. Eight distribution centers. 257:21 Q. You're doing all these things 257:22 we're talking about for eight distribution 257:23 centers, correct? 257:24 A. Yes.	

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258:5 - 258:11	Gustin, Dave 08-17-2018 (00:00:10) 258:5 Q. This is for eight distribution 258:6 centers. Earlier it was seven, right? 258:7 A. Earlier it was eight. Then it 258:8 went down to seven. 258:9 Q. Okay. 258:10 A. I thought it was six at the 258:11 end.	DG04.154
258:12 - 258:23	Gustin, Dave 08-17-2018 (00:00:27) 258:12 Q. It says, "With backing up other 258:13 regions" -- and on top of your regions, you 258:14 were backing up other regions, correct? 258:15 A. Each DRA had to back up another 258:16 DRA for vacations. 258:17 Q. So along with your job, you're 258:18 backing up these -- you're backing up DRAs 258:19 from other parts of the country, correct? Am 258:20 I right? 258:21 A. When the -- when -- when the 258:22 DRA that I backed up was not available, then 258:23 I watched his region until he was back.	DG04.155
259:1 - 259:14	Gustin, Dave 08-17-2018 (00:00:30) 259:1 Q. So you're "scanning script 259:2 data, other steps as needed with eight DCs 259:3 for the first couple of years. Then seven 259:4 the rest of the time with backing up other 259:5 regions, with having Target, Walmart, 259:6 Spartan, Thrifty White and other RNAs, my 259:7 days for the last third of the month were a 259:8 blur." 259:9 Do you remember it being a 259:10 blur? You wrote this down -- at the time you 259:11 wrote down your "days were a blur." 259:12 A. Those days -- 259:13 Q. What you wrote here. 259:14 A. -- went by pretty fast.	DG04.156
261:7 - 262:4	Gustin, Dave 08-17-2018 (00:01:01) 261:7 Q. You see next line underneath 261:8 that it says, "A standard TCR would begin 261:9 with customer contact to the sales rep of the	DG04.157

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261:10 DC. I had from the beginning told the team
 261:11 what to do to prep a TCR, gather all the
 261:12 needed information, including what the
 261:13 customer needed and when their increase and
 261:14 why they need an increase. They should find
 261:15 out who were the end users and all of the
 261:16 relative facts. These things would all be
 261:17 communicated to me by either e-mail or phone
 261:18 before a TCR was begun, and I would then look
 261:19 it all over and I would then research as
 261:20 appropriate any info I already had or what
 261:21 the news -- the web showed, including BOP
 261:22 sites, the Med Board sites. I then would
 261:23 determine if script data was needed. If so,
 261:24 I would communicate that and wait for the
 261:25 results."

262:1 It says, "Once obtaining the
 262:2 data, I would usually make a decision and
 262:3 communicating that with -- was okay to submit
 262:4 a TCR."

262:20 - 263:21

Gustin, Dave 08-17-2018 (00:01:07)

DG04.158

262:20 And then go over to page 5, and
 262:21 look at the last paragraph. "Some of the
 262:22 things I did early on in the NC were to
 262:23 include the ops team and the sales team in
 262:24 providing some of the things needed for
 262:25 decision-making. This was especially true in
 263:1 accounts being vetted. Since there was only
 263:2 one of me -- there was only one of me for 15
 263:3 states." Underline this, Corey.
 263:4 "There was only one of me for
 263:5 15 states, eight DCs, 50 sales reps and
 263:6 13,000 customers, including RNAs, hospitals,
 263:7 and ISMCs."
 263:8 Now, let me -- let me focus on
 263:9 that just a second. It wasn't just 13
 263:10 customers you're talking about -- 13,000
 263:11 customers. You're also dealing with RNAs.
 263:12 Explain to the jury what an RNA
 263:13 is.

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	263:14 A. It's a retail national account.	
	263:15 Q. It's a national account. Give	
	263:16 me some examples.	
	263:17 A. Walmart. Target.	
	263:18 Q. Okay. You were in charge of	
	263:19 that, too. You were in charge of Walmart.	
	263:20 You were in charge of Target.	
	263:21 What else?	
263:24 - 264:19	Gustin, Dave 08-17-2018 (00:00:42)	DG04.159
	263:24 THE WITNESS: I was DRA	
	263:25 assigned to those, but the liaisons	
	264:1 and the people that were, you know,	
	264:2 communicators with those retail	
	264:3 national accounts were located in	
	264:4 Dallas. So a lot of the work took	
	264:5 place before it got to me, but they	
	264:6 were not granted the ability to	
	264:7 actually make increases and so forth,	
	264:8 so the DRAs did that as they were	
	264:9 assigned.	
	264:10 QUESTIONS BY MR. PAPANTONIO:	
	264:11 Q. Now, we're talking about for	
	264:12 your entire region, or was it the entire	
	264:13 nation on these RNAs that you were partially	
	264:14 responsible for?	
	264:15 A. I would have been all Walmarts.	
	264:16 Q. All over the country,	
	264:17 California to New York, correct?	
	264:18 A. Yes, but in-house visits were	
	264:19 not required on those, so...	
264:25 - 265:2	Gustin, Dave 08-17-2018 (00:00:09)	DG04.160
	264:25 I want to show you, sir,	
	265:1 document 44.	
	265:2 A. Document 44.	
265:7 - 265:7	Gustin, Dave 08-17-2018 (00:00:01)	DG04.161
	265:7 MS. MOORE: Gustin 1.	
265:12 - 265:16	Gustin, Dave 08-17-2018 (00:00:09)	DG04.162
	265:12 Q. Sir, did you -- did you get a	
	265:13 chance before you came in to here today to	
	265:14 look at this report that was sent to the CEO	

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266:14 - 267:9	<p>265:15 of your company, Mr. Hammergren?</p> <p>265:16 A. No, I did not see this.</p> <p>Gustin, Dave 08-17-2018 (00:00:41)</p> <p>266:14 Okay. So this is to</p> <p>266:15 Mr. Hammergren.</p> <p>266:16 Do you see that?</p> <p>266:17 A. I do see that.</p> <p>266:18 Q. It says -- I want to start out</p> <p>266:19 with the second paragraph. It says, "As part</p> <p>266:20 of our investigation, the committee wrote to</p> <p>266:21 you on May 8th regarding your distribution</p> <p>266:22 practices generally and in particular with</p> <p>266:23 respect to West Virginia. As we mentioned in</p> <p>266:24 that letter, the opioid epidemic has been</p> <p>266:25 particularly devastating to West Virginia."</p> <p>267:1 Now, West Virginia was part of</p> <p>267:2 your territory as a DRA, correct?</p> <p>267:3 A. A small part of West Virginia</p> <p>267:4 was, yes.</p> <p>267:5 Q. And it says, "In 2015, West</p> <p>267:6 Virginia had the highest opioid overdose</p> <p>267:7 death rate in the nation."</p> <p>267:8 Do you see that?</p> <p>267:9 A. Yes, I do.</p>	DG04.163
269:21 - 270:24	<p>Gustin, Dave 08-17-2018 (00:01:12)</p> <p>269:21 It says, "Court filings also</p> <p>269:22 indicate that between 2007 and 2012, McKesson</p> <p>269:23 distributed 46 million doses of hydrocodone</p> <p>269:24 and 54 million doses of oxycodone, meaning</p> <p>269:25 that McKesson shipped a total of 100,000,484</p> <p>270:1 doses to West Virginia during this period of</p> <p>270:2 time."</p> <p>270:3 Is that the first -- probably</p> <p>270:4 the first time you've seen those numbers,</p> <p>270:5 isn't it?</p> <p>270:6 A. Yes, it is.</p> <p>270:7 Q. Okay. Now, if you go to the</p> <p>270:8 next page, it says, "Sav-Rite No. 1, Kermit,</p> <p>270:9 West Virginia."</p> <p>270:10 Do you see that?</p>	DG04.164

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270:11 A. Yes.

270:12 Q. It says, "On December 26th" --

270:13 and this is your territory, correct?

270:14 A. I don't know where Kermit is.

270:15 Q. Well, let's look. It says, "On

270:16 December 2016, the Charleston Gazette-Mail

270:17 reported that Sav-Rite Pharmacy located in

270:18 Kermit, West Virginia, was among the top

270:19 purchasers of hydrocodone in West Virginia

270:20 between 2007 and 2012. According to US

270:21 Census data, the town of Kermit had a

270:22 population of 406 individuals in 2010."

270:23 Do you see that?

270:24 A. Yes, I see that.

271:4 - 272:3

Gustin, Dave 08-17-2018 (00:00:47)

DG04.165

271:4 Mount Gay was your -- that

271:5 was -- Mount Gay was an area that you were

271:6 responsible for, right?

271:7 A. Yes.

271:8 Q. And did you know that the

271:9 Congressional hearing actually talked

271:10 specifically about Mount Gay as being an area

271:11 where there was a glut of pharmaceuticals

271:12 sent into that area? Anybody tell you that

271:13 before you came here today? Go to page --

271:14 A. I don't remember that.

271:15 Q. Go to page 5.

271:16 Remember we talked about Family

271:17 Discount? It says, "Family Discount

271:18 Pharmacy, Mount Gay, Shamrock, West Virginia,

271:19 and Stollings." Stollings, West Virginia,

271:20 was also your account, right?

271:21 A. Stollings?

271:22 Q. Stollings.

271:23 A. The name rings a bell. Like

271:24 the pharmacies were named that or

271:25 something --

272:1 Q. Well, they're --

272:2 A. -- I don't remember, but -- for

272:3 sure, but I think.

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272:9 - 272:22	Gustin, Dave 08-17-2018 (00:00:34) 272:9 "DEA ARCOS data showed that 272:10 between 2006 and 2004, McKesson supplied 272:11 Family Discount Pharmacy in Mount Gay" -- 272:12 That would be your territory, 272:13 right? 272:14 A. Yes. 272:15 Q. -- "with 5,122,000 hydrocodone 272:16 pills and 695,000 oxycodone pills for a total 272:17 of 5,000,818 [sic] pills." 272:18 Now, you know what the 272:19 population of Mount Gay is, is 1,017 -- 272:20 A. 1,700. 272:21 Q. Huh? 272:22 A. About 1,700.	DG04.166
273:5 - 273:24	Gustin, Dave 08-17-2018 (00:00:59) 273:5 Q. Well, let's read it. We agree 273:6 there's 1,779 people in Stollings. 273:7 You see right up above where it 273:8 says -- where it says that right here? 273:9 A. Yes, I see that. 273:10 Q. Okay. And then it says -- and 273:11 it says, "In 2006, McKesson supplied this 273:12 pharmacy with 1,767,400 hydrocodone pills for 273:13 an average of one -- 140 -- for an average of 273:14 147,000 pills per month, or 4,842 hydrocodone 273:15 pills per day, in 2007, right? 273:16 And that's a population of 273:17 1,700 people, correct? 273:18 A. That's what it says. 273:19 Q. And do you know, sir, that 273:20 after that it increased every year? After 273:21 this, it kept increasing every year; did 273:22 anybody ever tell you that? 273:23 A. No, I didn't -- I didn't know 273:24 that.	DG04.167
274:6 - 275:18	Gustin, Dave 08-17-2018 (00:01:53) 274:6 Q. It says -- down there it says, 274:7 "In 2013, McKesson provided this pharmacy 274:8 with 986,000 hydrocodone pills, in addition	DG04.168

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274:9 to 300,000 oxycodone pills, a 193 percent
 274:10 increase from the year prior."
 274:11 This is while you're actually
 274:12 there in charge of that account, right?
 274:13 A. That sounds like the time
 274:14 frame.
 274:15 Q. "This equals an average rate in
 274:16 2013 of 82,000 hydrocodone pills a month, or
 274:17 2,703 pills a day."
 274:18 Do you see that?
 274:19 A. Yes.
 274:20 Q. You see the next page,
 274:21 Stollings, do you know where -- you know
 274:22 Stollings was part of your area, too, right
 274:23 next to Mount Gay, right?
 274:24 A. I think so.
 274:25 Q. All right. It is.
 275:1 It says, "DEA data showed that
 275:2 McKesson" -- McKesson we're talking about --
 275:3 "also supplied hydrocodone to Family Discount
 275:4 Pharmacy of Stollings. According to the DEA
 275:5 data between 2006 and 2016, McKesson provided
 275:6 Family Discount Pharmacy of Stollings with
 275:7 2,102 -- 2,102,000 hydrocodone pills."
 275:8 Do you see that?
 275:9 A. Yes.
 275:10 Q. And if you look down at the
 275:11 next -- the next paragraph, it's talking
 275:12 about these number of pills being six times
 275:13 the amount of hydrocodone that an average
 275:14 pharmacy in rural West Virginia would have
 275:15 received.
 275:16 Do you see that? Six times?
 275:17 A. I see that's what it says, over
 275:18 six times the amount.

283:9 - 283:14

Gustin, Dave 08-17-2018 (00:00:12)

DG04.169

283:9 Q. Is that your testimony, that
 283:10 after reviewing what we've -- you don't
 283:11 believe that McKesson has any responsibility
 283:12 in the -- in the death catastrophe related to

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283:17 - 283:25	<p>283:13 narcotics that they sold throughout this 283:14 country?</p> <p>Gustin, Dave 08-17-2018 (00:00:21)</p> <p>283:17 Q. Yes or no?</p> <p>283:18 A. I don't think McKesson's 283:19 responsible for the opioid crisis, and the 283:20 company that I worked for functioned in good 283:21 faith all the time, never asked me to make 283:22 any kind of ethical or illegal compromises 283:23 and was consistent throughout my time with 283:24 the company at every level that I was with 283:25 them.</p>	DG04.170
284:1 - 284:7	<p>Gustin, Dave 08-17-2018 (00:00:16)</p> <p>284:1 Q. Yeah, they were so consistent, 284:2 sir, that in 2008, the US government fined 284:3 them \$13 million for breaking the law, and in 284:4 2017, the US government fined them 284:5 \$150 million for breaking the law. 284:6 Is that the consistent company 284:7 you're talking about?</p>	DG04.171
284:11 - 284:12	<p>Gustin, Dave 08-17-2018 (00:00:01)</p> <p>284:11 Q. Is that the company you're 284:12 talking about?</p>	DG04.172
284:14 - 284:15	<p>Gustin, Dave 08-17-2018 (00:00:02)</p> <p>284:14 THE WITNESS: I'm talking about 284:15 the McKesson that I worked for.</p>	DG04.173
285:10 - 285:18	<p>Gustin, Dave 08-17-2018 (00:00:17)</p> <p>285:10 Q. Well, no, sir. You want to 285:11 tell me how proud you are of this company. 285:12 Didn't you? Isn't that what you just want to 285:13 tell me, how proud you are, how proud you are 285:14 of McKesson?</p> <p>285:15 A. I'm proud of the good faith 285:16 effort that my fellow DRAs and I and the 285:17 regulatory department made and the support 285:18 that we got and the direction that we got.</p>	DG04.174
316:19 - 317:3	<p>Gustin, Dave 08-17-2018 (00:00:15)</p> <p>316:19 Q. Mr. Gustin, my name is Eric 316:20 Kennedy. I'm going to follow up on some 316:21 questions Mr. Papantonio asked you.</p>	DG04.175

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	<p>316:22 You talked a lot about what</p> <p>316:23 happened with Mr. Papantonio. I'm going to</p> <p>316:24 try to talk to you about -- about how it</p> <p>316:25 happened, look at some of your policies and</p> <p>317:1 procedures.</p> <p>317:2 All right?</p> <p>317:3 A. Yes, sir.</p>	
317:4 - 317:20	<p>Gustin, Dave 08-17-2018 (00:00:40)</p> <p>317:4 Q. Now, but before I get into</p> <p>317:5 that, something struck me about your</p> <p>317:6 testimony. I think you said you were proud</p> <p>317:7 of McKesson; is that correct?</p> <p>317:8 A. Proud of the effort that my</p> <p>317:9 team and I put in to try and do our jobs.</p> <p>317:10 Q. Let me ask you something, maybe</p> <p>317:11 not about your team and your job. Let me ask</p> <p>317:12 you this: If you knew McKesson actually sat</p> <p>317:13 down before that 2008 program, that</p> <p>317:14 monitoring program, came into play, if you</p> <p>317:15 knew that they actually sat down and they</p> <p>317:16 asked themselves, "How are we going to get</p> <p>317:17 around these thresholds, so that that doesn't</p> <p>317:18 affect sales," they actually sat down and</p> <p>317:19 asked themselves that question, would you be</p> <p>317:20 proud of that?</p>	DG04.176
317:25 - 318:7	<p>Gustin, Dave 08-17-2018 (00:00:24)</p> <p>317:25 Q. Would you be proud of that?</p> <p>318:1 A. I find it hard to believe that</p> <p>318:2 they would or did do something like that.</p> <p>318:3 Q. Let me ask you this: If they</p> <p>318:4 actually came up with a plan, how they were</p> <p>318:5 going to get around these thresholds so that</p> <p>318:6 it would not affect sales, would you be proud</p> <p>318:7 of that?</p>	DG04.177
318:9 - 318:12	<p>Gustin, Dave 08-17-2018 (00:00:05)</p> <p>318:9 THE WITNESS: I guess I would</p> <p>318:10 wonder what the plan would be as to</p> <p>318:11 how they would get around me in that</p> <p>318:12 role.</p>	DG04.178
318:17 - 319:4	<p>Gustin, Dave 08-17-2018 (00:00:38)</p>	DG04.179

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318:17	Q. McKesson was issued a whole lot	
318:18	of subpoenas to distribution centers.	
318:19	Records are seized. In 2008 they enter into	
318:20	a settlement agreement, correct?	
318:21	A. That's my understanding, yes.	
318:22	Q. They paid \$13 million, true?	
318:23	A. It sounds like the number I	
318:24	remember.	
318:25	Q. As part of that settlement	
319:1	program where they paid \$13 million, they	
319:2	also agreed with the DEA to establish a new	
319:3	program based upon thresholds, true?	
319:4	A. That sounds true.	
319:15 - 319:16	Gustin, Dave 08-17-2018 (00:00:09)	DG04.180
319:15	Q. Give me 5036, please. Just so	
319:16	that there's nothing to guess about.	
319:17 - 319:17	Gustin, Dave 08-17-2018 (00:00:02)	DG04.300
319:17	MR. GOETZ: 563.	
319:18 - 320:12	Gustin, Dave 08-17-2018 (00:00:47)	DG04.301
319:18	QUESTIONS BY MR. KENNEDY:	
319:19	Q. This is the agreement with the	
319:20	DEA.	
319:21	Do you see that, 2008?	
319:22	A. I see the date, yes.	
319:23	Q. Let me ask you this: You	
319:24	became a director of regulatory affairs. You	
319:25	were going to administer and manage a program	
320:1	based upon this agreement.	
320:2	Were you ever shown this	
320:3	agreement when you started your job in '08 or	
320:4	prior to that?	
320:5	A. The exact agreement in its	
320:6	entirety, no. When we had our meeting, there	
320:7	was -- I think there was like a PowerPoint	
320:8	presentation or something where the parts	
320:9	that we needed to see referencing our jobs as	
320:10	DRAs were talked about and shown there, but	
320:11	that not -- again, I was not given this so	
320:12	that I could see the whole thing.	
320:17 - 321:14	Gustin, Dave 08-17-2018 (00:00:51)	DG04.181

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320:17 Q. Yes, sir.

320:18 This is part of the settlement.

320:19 You see that, "Obligations of McKesson."

320:20 Do you see that?

320:21 A. Yes.

320:22 Q. "McKesson agrees to maintain a

320:23 compliance program designated to detect and

320:24 prevent diversion of controlled substances as

320:25 required under the CSA and applicable DEA

321:1 regulations."

321:2 Did I read that right?

321:3 A. Yes.

321:4 Q. "This program shall include

321:5 procedures to review orders for controlled

321:6 substances."

321:7 Correct?

321:8 A. Yes.

321:9 Q. "Orders that exceed established

321:10 thresholds and criteria will be reviewed by a

321:11 McKesson employee trained to detect

321:12 suspicious orders."

321:13 Do you see that?

321:14 A. Yes.

321:17 - 322:3

Gustin, Dave 08-17-2018 (00:00:25)

DG04.182

321:17 Q. So were you informed that part

321:18 of the agreement was requiring the

321:19 establishment of thresholds?

321:20 A. Yes.

321:21 Q. All right. So in 2008 McKesson

321:22 launches its CSMP, Controlled Substance

321:23 Monitoring Program, right?

321:24 A. In 2008?

321:25 Q. Yes.

322:1 A. Yes.

322:2 MR. KENNEDY: Give me P 345,

322:3 please.

322:7 - 323:1

Gustin, Dave 08-17-2018 (00:00:32)

DG04.183

322:7 Q. Have you seen that before? I'm

322:8 assuming you've seen that plenty of times?

322:9 A. Yes. Yes.

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322:10 Q. That's the 2008 monitoring

322:11 program, correct?

322:12 A. Yes.

322:13 Q. This was kind of -- this was

322:14 the Bible for you, was it not?

322:15 A. It certainly felt like it, yes.

322:16 Q. All right. Spent a lot of time

322:17 with this program?

322:18 A. I did.

322:19 Q. Where it says, "Purpose."

322:20 Do you see that, purpose?

322:21 A. Yes.

322:22 Q. "Purpose of the program, set

322:23 and maintain customers' thresholds for all

322:24 controlled substances."

322:25 Do you see that?

323:1 A. Yes.

323:9 - 323:22

Gustin, Dave 08-17-2018 (00:00:36)

DG04.184

323:9 Q. That's what they sat down and

323:10 talked about before they created this

323:11 program, how are we going to get around this

323:12 language of set and maintain, do you see

323:13 that, set and maintain?

323:14 A. I see that.

323:15 Q. The next says, "Make informed

323:16 decisions based upon established threshold

323:17 information."

323:18 Do you see that?

323:19 A. I do.

323:20 Q. That was the foundation of the

323:21 program.

323:22 A. Yes.

324:2 - 324:15

Gustin, Dave 08-17-2018 (00:00:29)

DG04.185

324:2 And this program was given to

324:3 the DEA in writing; you're aware of that?

324:4 A. Given to the DEA?

324:5 Q. Was given to the DEA, I think,

324:6 during five different meetings and PowerPoint

324:7 presentations, was given to the DEA before

324:8 you folks brought it online.

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	324:9 You're aware of that?	
	324:10 A. I'm not disputing it. I don't	
	324:11 remember, but, yes.	
	324:12 Q. So you would have told the DEA	
	324:13 with respect to this threshold system that	
	324:14 you were going to set them and you were going	
	324:15 to maintain them, true?	
324:18 - 324:20	Gustin, Dave 08-17-2018 (00:00:03)	DG04.186
	324:18 THE WITNESS: Our	
	324:19 responsibility was to set and then	
	324:20 maintain the thresholds.	
324:25 - 325:5	Gustin, Dave 08-17-2018 (00:00:16)	DG04.187
	324:25 Q. That's what they told the DEA,	
	325:1 but McKesson had no intention of allowing the	
	325:2 thresholds to affect sales from the	
	325:3 beginning, is that what you found to be true?	
	325:4 No intention of allowing these thresholds to	
	325:5 affect sales?	
325:7 - 325:8	Gustin, Dave 08-17-2018 (00:00:02)	DG04.188
	325:7 THE WITNESS: No, that was not	
	325:8 what I found to be true.	
325:10 - 326:2	Gustin, Dave 08-17-2018 (00:00:30)	DG04.189
	325:10 Q. Pharmacies weren't told about	
	325:11 the thresholds, were they? They weren't told	
	325:12 specifically what their threshold was, true?	
	325:13 A. They knew they had thresholds.	
	325:14 They didn't know what the threshold number	
	325:15 was.	
	325:16 Q. Because that wouldn't make any	
	325:17 sense, that would defeat the purpose of these	
	325:18 thresholds, right?	
	325:19 A. That would mean that they would	
	325:20 start gaming the thresholds.	
	325:21 Q. They would game it. They would	
	325:22 manage underneath the thresholds so they	
	325:23 would not be investigated, correct? That's	
	325:24 why you didn't tell them?	
	325:25 A. That was -- that was my reason	
	326:1 for not telling them. I didn't want them to	
	326:2 game the thresholds.	

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326:14 - 326:17	Gustin, Dave 08-17-2018 (00:00:14)	DG04.190
	326:14 Q. So you don't want to tell the	
	326:15 pharmacy their threshold, but McKesson	
	326:16 created a system whereby you would warn the	
	326:17 pharmacy of their threshold, did you not?	
326:21 - 328:8	Gustin, Dave 08-17-2018 (00:01:26)	DG04.191
	326:21 Q. Correct?	
	326:22 A. It seemed like there was a --	
	326:23 you can call it a warning or something on	
	326:24 their -- on their statement that showed when	
	326:25 they are -- you know, got to a certain point.	
	327:1 Q. In fact, the warning, the folks	
	327:2 who put this together who wanted to make sure	
	327:3 that the thresholds did not affect sales,	
	327:4 they put that right into the program, didn't	
	327:5 they? We're going to warn them. As they	
	327:6 approached their threshold, we're going to	
	327:7 warn them, right?	
	327:8 A. Sir, I don't know what their	
	327:9 motivations for doing things were.	
	327:10 Q. The customer got a warning	
	327:11 right on their statement when they got to a	
	327:12 certain percentage of their threshold, true?	
	327:13 A. To the best of my recollection,	
	327:14 yeah, the statements did have a -- something	
	327:15 when they got almost there.	
	327:16 Q. In fact, you folks at McKesson,	
	327:17 at the distribution centers, including you	
	327:18 and others, you would get a month-to-date	
	327:19 report, would you not, that told you exactly	
	327:20 where certain pharmacies were with respect to	
	327:21 their threshold, true?	
	327:22 A. I could generate such a report	
	327:23 out of business warehouse on my own from my	
	327:24 own offices.	
	327:25 Q. So if a pharmacy got above,	
	328:1 let's say, 85 percent, it would spit out a	
	328:2 report so everybody would know which	
	328:3 pharmacies were getting close to their	
	328:4 thresholds. That was a standard report that	

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328:5 you created?

328:6 A. For myself.

328:7 Q. For yourself?

328:8 A. To use.

330:6 - 331:1

Gustin, Dave 08-17-2018 (00:00:50)

DG04.192

330:6 Q. McKesson set up an entire

330:7 national system to call customers when they

330:8 approached their threshold, to warn them?

330:9 A. I believe when it was first

330:10 established, they were making what they

330:11 called proactive calls because customers were

330:12 in jeopardy of breaching or trying to

330:13 breach -- they couldn't actually breach them,

330:14 the system would stop that.

330:15 Q. In fact, sir, McKesson set up

330:16 a -- they set up a call center down in

330:17 Westlake, Texas, where there was 80 to 100

330:18 people actually getting lists of customers

330:19 all across the country that were approaching

330:20 thresholds and calling them up and warning

330:21 them, true?

330:22 A. That was ServiceFirst.

330:23 Q. ServiceFirst.

330:24 A. Yes.

330:25 Q. And that's what they did.

331:1 A. I think initially, yes.

331:2 - 331:9

Gustin, Dave 08-17-2018 (00:00:23)

DG04.193

331:2 Q. In fact, sir, they not only

331:3 called the customers -- they not only called

331:4 customers to warn them they were approaching

331:5 their threshold, they would actually ask

331:6 them, "Hey, you're approaching your

331:7 threshold. You understand you'll get

331:8 investigated if you go over. Do you want an

331:9 increase?" They actually asked.

331:15 - 331:18

Gustin, Dave 08-17-2018 (00:00:04)

DG04.194

331:15 THE WITNESS: I don't know what

331:16 their script was or what they asked.

331:17 I don't have any idea. I didn't work

331:18 there.

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331:20 - 331:24	Gustin, Dave 08-17-2018 (00:00:13) 331:20 Q. You liaised as the director 331:21 of regulatory affairs to that program, and 331:22 you understand they actually called and said, 331:23 "You're approaching your threshold," and 331:24 asked them if they wanted an increase, true?	DG04.195
332:1 - 332:8	Gustin, Dave 08-17-2018 (00:00:17) 332:1 THE WITNESS: Okay. The way 332:2 you phrased it that time, I think that 332:3 they would also ask if they wanted an 332:4 increase or if there was a reason why 332:5 they were -- I don't know what they 332:6 asked them, but it was to let them 332:7 know that they were approaching their 332:8 threshold.	DG04.196
334:9 - 334:9	Gustin, Dave 08-17-2018 (00:00:02) 334:9 Q. Give me 6002, please.	DG04.197
334:20 - 336:1	Gustin, Dave 08-17-2018 (00:01:16) 334:20 Q. Who is -- who is Kevin -- 334:21 A. Meunier. 334:22 Q. -- Meunier? Who is he? 334:23 A. He was the distribution center 334:24 manager initially at Cape Girardeau DC and 334:25 when it was closed, then he came to 335:1 Washington Court House. 335:2 Q. You're included on this e-mail 335:3 of June 22, 2011? 335:4 A. That is to Kevin -- I'm copied 335:5 on it, yes. 335:6 Q. And does it state, "Anytime a 335:7 new customer, if loaded in our system, they 335:8 are set limits by control groups and it is 335:9 systematically monitored throughout the 335:10 month." 335:11 Do you see that? Do you see 335:12 that? 335:13 A. Anytime -- oh, that's 335:14 highlighted? Yes, I see that. 335:15 Q. The highlighted, yes. "Once 335:16 they hit a certain threshold, ServiceFirst	DG04.198

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	335:17 will call and let them know that they're at a 335:18 certain percent and ask them if they need an 335:19 increase and why." 335:20 Do you see that? 335:21 A. Yes. 335:22 Q. You don't remember that? 335:23 A. I don't remember this e-mail, 335:24 but I do remember the process that -- I 335:25 just -- I don't know what they were all told, 336:1 but, yeah, I remember this.	
336:16 - 336:16	Gustin, Dave 08-17-2018 (00:00:02)	DG04.199
	336:16 Q. 1698, please.	
336:17 - 337:7	Gustin, Dave 08-17-2018 (00:00:30)	DG04.302
	336:17 ISMC, if you look at the top, 336:18 ISMC is independent small medium pharmacy, 336:19 sir? 336:20 A. Yes. 336:21 Q. "Controlled Substance 336:22 Monitoring Program, outbound calls, SF pilot 336:23 program." 336:24 Do you see that? 336:25 A. Yes, this is small or medium 337:1 chain, yes. 337:2 Q. All right. It says, 337:3 "ServiceFirst assist RSMs." 337:4 So ServiceFirst would be 337:5 assistants to these sales managers, regional 337:6 or retail sales managers, true? 337:7 A. Yes.	
338:8 - 339:15	Gustin, Dave 08-17-2018 (00:01:19)	DG04.200
	338:8 Q. It says that these folks -- 338:9 "These sales assistants can proactively 338:10 contact customers who reach their 90 percent 338:11 threshold." Right? 338:12 That's what it's -- that's what 338:13 it's telling you. That's the instructions, 338:14 true? 338:15 A. That's what it says. 338:16 Q. Down at the box, if they look 338:17 at that, if they look at that spreadsheet and	

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338:18 it's printed daily, right? Daily to these
338:19 folks down in Texas, right? Is that what it
338:20 says at the top, "Daily Report"?
338:21 A. I'm sorry, where it says --
338:22 Q. Right at the top under
338:23 "Policies," it says "Daily Report."
338:24 A. Yes.
338:25 Q. And it says in the box, it
339:1 says, "If they look at the report and the
339:2 customer has already been contacted this
339:3 month," go over to the then, "Has customer
339:4 reached 96 percent of the threshold? If yes,
339:5 contact the customer again."
339:6 Do you see that part? Do you
339:7 remember that?
339:8 A. I see that part.
339:9 Q. So this McKesson customer can
339:10 get notified that they're getting close to
339:11 their threshold on the warning -- on a
339:12 warning on their bill, and then they might
339:13 even get two phone calls from a sales
339:14 assistant in Texas to warn them, according to
339:15 the -- to the policy, right?

339:19 - 340:15 **Gustin, Dave 08-17-2018 (00:00:48)**

339:19 Q. Is that true? Is that what it
339:20 says?
339:21 A. It looks like that's what it
339:22 says.
339:23 Q. And you were the one from
339:24 regulatory that was liaisoning to this
339:25 program, correct?
340:1 A. Liaison into what program?
340:2 Q. ServiceFirst.
340:3 A. Later on.
340:4 At this time.
340:5 Q. Go to number 12 of this
340:6 program, would you? Just let me -- let me --
340:7 let me get to this. Just go to number 12 of
340:8 the program.
340:9 What does it tell them right

DG04.201

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	340:10 there?	
	340:11 A. "Ask if the customer needs to	
	340:12 increase the threshold."	
	340:13 Q. That's what they are told,	
	340:14 right?	
	340:15 A. That's what it says.	
347:2 - 347:22	Gustin, Dave 08-17-2018 (00:00:50)	DG04.202
	347:2 Q. Now, you told us that these	
	347:3 sales reps, the folks at McKesson, were not	
	347:4 to tell the customer the threshold because	
	347:5 that would allow them, I think, in your	
	347:6 words, to game the system. You don't want to	
	347:7 tell them about that, right?	
	347:8 A. Yes, I didn't want the	
	347:9 customers to know what their thresholds were.	
	347:10 Q. And did you inform the sales	
	347:11 personnel, "You shouldn't be telling the	
	347:12 customers because that allows them to game	
	347:13 the system"?	
	347:14 Did you tell them that?	
	347:15 A. I'm pretty sure that was part	
	347:16 of the initial conference calls and training	
	347:17 calls that we had with the retail sales	
	347:18 managers early on.	
	347:19 Q. Sales department listen to you?	
	347:20 A. You have to ask the sales	
	347:21 department. I don't know. I wasn't there	
	347:22 when they talked.	
348:2 - 348:2	Gustin, Dave 08-17-2018 (00:00:02)	DG04.203
	348:2 Q. 5067, please.	
348:3 - 348:7	Gustin, Dave 08-17-2018 (00:00:21)	DG04.303
	348:3 Look at the second page. The	
	348:4 second page, Amanda Miller, who is Amanda	
	348:5 Miller? She's from McKesson.	
	348:6 A. I don't know. Am I supposed to	
	348:7 know something about this?	
348:8 - 348:13	Gustin, Dave 08-17-2018 (00:00:15)	DG04.204
	348:8 Q. Who is Amanda Miller?	
	348:9 A. Amanda Miller. Amanda.	
	348:10 Amanda.	

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	348:11 Q. Do you know?	
	348:12 A. Off the top of my head, no, I	
	348:13 don't --	
348:14 - 348:22	Gustin, Dave 08-17-2018 (00:00:25)	DG04.205
	348:14 Q. Says she's a --	
	348:15 A. Oh, down here it says, "Account	
	348:16 manager, RNA support solutions." So another	
	348:17 RNA working in Texas.	
	348:18 Q. April 23, 2013, she sends an	
	348:19 e-mail to Melenie Petropoulos.	
	348:20 Do you see that?	
	348:21 Do you see that?	
	348:22 A. To --	
349:2 - 349:5	Gustin, Dave 08-17-2018 (00:00:07)	DG04.206
	349:2 Q. Are you on the same page I am?	
	349:3 A. Oh, there it is, to Melenie.	
	349:4 Q. All right. And Melenie is --	
	349:5 she's from Marc's, the pharmacy chain, right?	
349:8 - 349:25	Gustin, Dave 08-17-2018 (00:00:44)	DG04.207
	349:8 THE WITNESS: I don't know who	
	349:9 she is.	
	349:10 QUESTIONS BY MR. KENNEDY:	
	349:11 Q. Look up above, "Melenie	
	349:12 Petropoulos, vice president, pharmacy."	
	349:13 Do you see that?	
	349:14 A. Oh, up here. I was looking at	
	349:15 the bottom half. I'm sorry. Yes, I see	
	349:16 that.	
	349:17 Q. So McKesson, an account	
	349:18 manager, is sending an e-mail to Marc's	
	349:19 pharmacy and stating, "Melenie, let me know	
	349:20 if you need to make any adjustments."	
	349:21 And then she attaches, it looks	
	349:22 like, a cut-out from your daily report, your	
	349:23 daily threshold report, and she's giving her	
	349:24 the thresholds, right? Oxycodone, 8,000;	
	349:25 oxycodone, 9,000; oxycodone 10,000.	
350:1 - 350:2	Gustin, Dave 08-17-2018 (00:00:03)	DG04.208
	350:1 She gives her the threshold for	
	350:2 three different stores, does she not?	

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350:7 - 350:11	Gustin, Dave 08-17-2018 (00:00:07) 350:7 A. It's the first time I've seen 350:8 this. It's not me, so I -- you're asking me 350:9 to draw a conclusion, and I don't know about 350:10 the phone calls between these people or 350:11 anything.	DG04.209
352:5 - 352:7	Gustin, Dave 08-17-2018 (00:00:10) 352:5 Q. Is my answer correct, Amanda 352:6 Miller from McKesson is sending thresholds to 352:7 someone from Marc's; is that true?	DG04.210
352:11 - 352:11	Gustin, Dave 08-17-2018 (00:00:01) 352:11 Q. Is that true?	DG04.211
352:13 - 352:22	Gustin, Dave 08-17-2018 (00:00:19) 352:13 THE WITNESS: 9,000, 12,000, on 352:14 the surface, it looks like that's 352:15 what's taking place. 352:16 QUESTIONS BY MR. KENNEDY: 352:17 Q. And then the person from Marc's 352:18 e-mails back and says, "Please arrange 352:19 increase the thresholds for oxycodone for 352:20 Marc's 24WA from 9,000 to 12,000." 352:21 That's the response from 352:22 Marc's, is it not?	DG04.212
352:25 - 353:1	Gustin, Dave 08-17-2018 (00:00:01) 352:25 THE WITNESS: That's what it 353:1 says down there.	DG04.213
353:2 - 354:12	Gustin, Dave 08-17-2018 (00:01:38) 353:2 QUESTIONS BY MR. KENNEDY: 353:3 Q. Go all the way up to the top of 353:4 the first page. There's some e-mails back 353:5 and forth about submitting these thresholds. 353:6 Sales rep is wondering, you know, how soon 353:7 the change of increase will come into effect. 353:8 And Amanda Miller writes the sales rep, 353:9 Graziano, an e-mail and says, "No, TCRs are 353:10 done the same day." 353:11 That was -- that was the rule, 353:12 was it not? Same day? 353:13 A. Same day? 353:14 Q. 24 hours. I think there -- you	DG04.304

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	353:15 wrote that in your little note and letter to 353:16 lead counsel of McKesson, 24 hours? 353:17 A. 24 hours doesn't imply the same 353:18 day, but it's 24 hours. 353:19 Q. Who made that rule? Who made 353:20 that rule? 353:21 A. It might have been -- I 353:22 don't -- you know, I don't know for sure who 353:23 made the rule. 353:24 Q. Somebody above you? 353:25 A. Most rules were made by someone 354:1 above me. 354:2 Q. This sales manager is wondering 354:3 when this TCR will be increased. He says -- 354:4 and Melenie writes back from McKesson, "No, 354:5 TCRs are done same day. They'll be able to 354:6 order tonight. Melenie, from Marc's, should 354:7 know this. TCRs are commonplace." 354:8 Let me go back to this. 354:9 McKesson had to put thresholds in. They had 354:10 to put thresholds in, so they needed to find 354:11 a way to get around thresholds so that they 354:12 wouldn't affect sales, right? Right?	
354:14 - 354:15	Gustin, Dave 08-17-2018 (00:00:01) 354:14 THE WITNESS: I don't know that 354:15 that's true.	DG04.214
356:10 - 356:19	Gustin, Dave 08-17-2018 (00:00:31) 356:10 Q. Let me ask you this: If 356:11 McKesson truly intended to set and maintain 356:12 its thresholds, it would not have established 356:13 a daily national program whereby it called 356:14 thousands of pharmacies to warn them that 356:15 they were approaching their threshold, true? 356:16 A. You know, that -- that's -- 356:17 again, that's almost in the form of a 356:18 hypothetical. I don't know that that was -- 356:19 were their intention.	DG04.215
377:8 - 378:5	Gustin, Dave 08-17-2018 (00:00:58) 377:8 Q. As a director of regulatory 377:9 affairs, it was your job to approve	DG04.216

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377:10 thresholds, true?

377:11 A. Threshold changes, yes.

377:12 Q. Yes, I'm sorry. Threshold

377:13 changes.

377:14 A. Yes.

377:15 Q. And you were the director in

377:16 the North Central, true?

377:17 A. Yes, that's true.

377:18 Q. You would also help out in the

377:19 northeast and in other regions when folks

377:20 were on vacation or out sick?

377:21 A. Yeah, most of my time I was

377:22 backing up the south, but there were other

377:23 times that -- short periods of time we would

377:24 back up one of the other regions.

377:25 Q. You would approve threshold

378:1 increases for regional -- or excuse me, for

378:2 the retail national accounts, the big chains?

378:3 A. Approve them? I would -- yeah,

378:4 I would do -- I would perform the increase in

378:5 the system, yes.

378:6 - 378:18

Gustin, Dave 08-17-2018 (00:00:30)

DG04.217

378:6 Q. Well, if we look at the

378:7 monitoring program, it says that's -- the

378:8 director of regulatory affairs approves

378:9 those.

378:10 A. Yeah, and it changed over a

378:11 period of time because when we first started

378:12 in 2008, it was just the DRAs and the field

378:13 DRAs, and we had the changes assigned to us,

378:14 but over time, they appointed a director of

378:15 regulatory affairs for the retail national

378:16 accounts, if I'm not mistaken. And at that

378:17 point, the approval process could have moved.

378:18 But that was --

378:19 - 379:24

Gustin, Dave 08-17-2018 (00:01:20)

DG04.218

378:19 Q. That was 2013, when Mr. Oriente

378:20 got appointed that in 2013. So I'm talking

378:21 about 2008 to '13, you did approvals for

378:22 regional -- or retail national accounts; is

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378:23 that true?

378:24 A. For retail. Yeah, I think

378:25 that's true.

379:1 Q. And that would have been across

379:2 the country. That wasn't just confined to

379:3 North Central?

379:4 A. Across the country for the

379:5 accounts that I was given to be the DRA for.

379:6 Q. And in 2008 to about 2010, the

379:7 threshold change request forms, supporting

379:8 documents, level 1s, level 2s, level 3s, all

379:9 of that documentation was kept in the

379:10 distribution center files during that

379:11 two-year period, '08 to '10, right?

379:12 A. Yes. We called them the CSMP

379:13 files.

379:14 Q. And then after that, this

379:15 documentation, the TCRs, the threshold change

379:16 requests, the supporting documents, the

379:17 level 1s, the level 2s, the level 3s, that

379:18 started to get pushed into SharePoint at that

379:19 point in time, true?

379:20 A. That sounds about right.

379:21 Q. And that was a computer

379:22 database that McKesson created, right?

379:23 A. That sounds like the right

379:24 term, yes.

380:2 - 380:24

Gustin, Dave 08-17-2018 (00:00:49)

DG04.219

380:2 First of all, McKesson

380:3 represented to the DEA, as was stated in the

380:4 monitoring program that it presented to the

380:5 DEA, that they would set and maintain

380:6 thresholds, correct?

380:7 A. Yes.

380:8 Q. And secondly, they represented,

380:9 McKesson represented, to the DEA that with

380:10 respect to these thresholds, when they did

380:11 change them, that documentation would be

380:12 required, true?

380:13 A. Documentation -- I know that

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	380:14 part of our initial training was to doc 380:15 and -- document what we did. 380:16 Q. You want to document the reason 380:17 for the change. In fact, it's right on the 380:18 form, the TCR form itself? 380:19 A. Yes. 380:20 Q. And that's what they 380:21 represented to the DEA. We're going to 380:22 change the threshold. If we're going to 380:23 increase it, documentation at McKesson will 380:24 be required, true?	
381:1 - 381:4	Gustin, Dave 08-17-2018 (00:00:07) 381:1 THE WITNESS: I know that 381:2 documentation was required. I don't 381:3 know the -- about a commitment to the 381:4 DEA, per se.	DG04.220
381:10 - 381:20	Gustin, Dave 08-17-2018 (00:00:34) 381:10 See this, this is Exhibit 555. 381:11 All right. You see that's 381:12 entitled "McKesson Pharmaceutical Controlled 381:13 Substance Monitoring Program, CSMP." 381:14 Do you see that? 381:15 A. Yes. 381:16 Q. "July 31, 2008, DEA Discussion 381:17 Document." 381:18 Do you see that? 381:19 A. I do. 381:20 Q. Go to .7.	DG04.221
381:21 - 382:21	Gustin, Dave 08-17-2018 (00:00:41) 381:21 .7 is part of a slideshow, 381:22 "CSMP, establish customer thresholds, 381:23 c-o-n-t, period." 381:24 Do you see that? 381:25 A. Yes. 382:1 Q. And down this it says, 382:2 "Adjusting thresholds" and underneath that it 382:3 says, "Requires documentation." 382:4 A. Yes. 382:5 Q. And I'll represent to you this 382:6 is -- this is one of the PowerPoints in a	DG04.305

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	382:7 presentation to the DEA. I think that the 382:8 letter talked about five such presentations 382:9 to the DEA. 382:10 Do you remember that? Do you 382:11 remember the letter? 382:12 A. Remember it? 382:13 Q. Yeah, you talked about with 382:14 Mr. Papantonio. 382:15 A. Oh, yes. 382:16 Q. The letter said five 382:17 presentations, and this was one of them, I'll 382:18 represent to you. 382:19 All right? 382:20 A. Okay. 382:21 Q. So give me the Elmo, please.	
382:22 - 383:1	Gustin, Dave 08-17-2018 (00:00:13) 382:22 Two things then we have 382:23 represented. You're going to set and 382:24 maintain thresholds, and if you're going to 382:25 change them, documentation will be required. 383:1 Two representations to the DEA, agreed?	DG04.306
383:4 - 383:15	Gustin, Dave 08-17-2018 (00:00:25) 383:4 THE WITNESS: That's what it 383:5 looks like. 383:6 QUESTIONS BY MR. KENNEDY: 383:7 Q. But you, in doing your job, 15 383:8 states, you found out pretty early on that 383:9 McKesson was not going to let -- again, they 383:10 were not going to let these thresholds stand 383:11 in the way of sales. You found that out 383:12 early on, did you not, in your position as a 383:13 director of regulatory affairs? 383:14 A. I never thought of it that way 383:15 or in those terms.	DG04.222
383:20 - 384:14	Gustin, Dave 08-17-2018 (00:01:27) 383:20 Eagle was one of your chain of pharmacy 383:21 accounts, was it not? 383:22 A. I believe so. 383:23 Q. And I'll represent to you this 383:24 is the Giant Eagle store 0058 -- I'm sorry,	DG04.7

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	383:25 it is store 4022. And it is the file that we 384:1 were provided by McKesson with respect to 384:2 this store, right? I'll represent that to 384:3 you. 384:4 If you go to the last page, 384:5 because these go in reverse order, go all the 384:6 way to the bottom. It's an e-mail from you. 384:7 This is -- again, this is from the Giant 384:8 Eagle file that we received from McKesson. 384:9 An e-mail from you, Dave 384:10 Gustin, and you're sending it to Oriente, he 384:11 is a director of regulatory affairs, correct? 384:12 In the east, true? I'm all the way at the 384:13 bottom. 384:14 A. Right. That's true.	
383:19 - 383:19	Gustin, Dave 08-17-2018 (00:00:02)	DG04.223
	383:19 Q. Give me 6014, please.	
383:19 - 383:24	Gustin, Dave 08-17-2018 (00:00:13)	DG04.307
	383:19 Q. Giant 383:20 Eagle was one of your chain of pharmacy 383:21 accounts, was it not? 383:22 A. I believe so. 383:23 Q. And I'll represent to you this 383:24 is the Giant Eagle store 0058 --	
383:24 - 384:13	Gustin, Dave 08-17-2018 (00:00:45)	DG04.308
	383:24 I'm sorry, 383:25 it is store 4022. And it is the file that we 384:1 were provided by McKesson with respect to 384:2 this store, right? I'll represent that to 384:3 you. 384:4 If you go to the last page, 384:5 because these go in reverse order, go all the 384:6 way to the bottom. It's an e-mail from you. 384:7 This is -- again, this is from the Giant 384:8 Eagle file that we received from McKesson. 384:9 An e-mail from you, Dave 384:10 Gustin, and you're sending it to Oriente, he 384:11 is a director of regulatory affairs, correct? 384:12 In the east, true? I'm all the way at the 384:13 bottom.	

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385:6 - 386:22

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DG04.224

385:6 Q. I understand. I'm just
385:7 reading -- right, does it say "To Oriente"?
385:8 A. Yes, he's copied in the "to."
385:9 Q. Fine.
385:10 And Snider, who is Snider?
385:11 A. Blaine Snider was the
385:12 distribution center manager of New Castle,
385:13 Pennsylvania.
385:14 Q. Who is Catton, Rex Catton?
385:15 A. Rex -- I don't know if it's
385:16 Catton, Catton, whatever. He was, I think, a
385:17 retail national account rep, if I'm not
385:18 mistaken.
385:19 Q. Subject, New Castle, CSMP
385:20 report, 75 percent plus.
385:21 That's the report that lists
385:22 all of the customers who were at 75 percent
385:23 or greater on their threshold, true?
385:24 A. That appears to be true.
385:25 Q. And you e-mailed to Rex, "Rex,
386:1 I await your input. I can bump it" -- bump
386:2 means increase the threshold, true?
386:3 A. Yes, a bump would be a small
386:4 increase.
386:5 Q. You say, "Rex, I await your
386:6 input. I can bump it if you agree to a small
386:7 bump. I know RNA should make the contact
386:8 initially, but it looks like the customer
386:9 called the DC, so let me know."
386:10 Now, go up, next e-mail up,
386:11 Catton e-mails you back, all right, an hour
386:12 later, e-mails you back, same folks are
386:13 copied. Same subject.
386:14 And he says, "Dave, yes, please
386:15 bump it up. There were other stores in the
386:16 list that was sent yesterday. We spoke to
386:17 Greg Carlson yesterday, and he asked us to
386:18 increase those above 80 percent."
386:19 And Greg Carlson is from Giant

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386:20 Eagle, true? True?

386:21 A. You want a fast answer, I

386:22 don't -- I don't know that.

387:1 - 387:6

Gustin, Dave 08-17-2018 (00:00:13)

DG04.225

387:1 Q. Anyway, Greg Carlson, he's

387:2 asking for an increase in all of the stores

387:3 that are on the list that are at 80 percent

387:4 or greater with respect to their threshold,

387:5 true?

387:6 A. Yes.

387:11 - 388:21

Gustin, Dave 08-17-2018 (00:01:37)

DG04.226

387:11 Q. An hour after that -- go up to

387:12 the next, an hour after that, you e-mail

387:13 back. You e-mail back to Catton, to Oriente,

387:14 to Snider, to Zwick, to Lindsay, to McIntyre,

387:15 right, all of those folks? Same subject

387:16 line.

387:17 True? Same subject line?

387:18 A. Yes.

387:19 Q. And you e-mail back and you

387:20 say, "The list, by the way, is a long one."

387:21 And then you reference the CSMP threshold

387:22 warning report, right? True?

387:23 A. Yes.

387:24 Q. Then you state, "I need a

387:25 reason to go in and bump up all of those

388:1 stores' thresholds. They're all purchasing

388:2 at well past their historic trends or they

388:3 would not be on the report. The question is

388:4 why, and until it is answered, the response

388:5 should not just be going in and changing

388:6 their thresholds to keep them off the

388:7 report."

388:8 Is that what you stated to all

388:9 of those folks?

388:10 A. Yes.

388:11 Q. And when you told them that you

388:12 needed a reason to increase the threshold,

388:13 you were right, weren't you?

388:14 A. I must have felt like it or I

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	388:15 wouldn't have said it.	
	388:16 Q. That's the basis of the whole	
	388:17 program, right?	
	388:18 We -- you told the DEA that	
	388:19 documentation was going to be required, you	
	388:20 at least need a reason, and you were right	
	388:21 when you told everybody that, were you not?	
388:25 - 389:13	Gustin, Dave 08-17-2018 (00:00:27)	DG04.227
	388:25 Q. Correct? That's how the	
	389:1 program was supposed to be run, true?	
	389:2 A. I'm sure it felt right at the	
	389:3 time.	
	389:4 Q. Sitting here today, don't you	
	389:5 agree that's how the program was supposed to	
	389:6 be run?	
	389:7 A. It feels right now, too.	
	389:8 Q. Because there's a crisis going	
	389:9 on. This is '08.	
	389:10 A. I was sensitive to that, yes.	
	389:11 Q. More people are dying every	
	389:12 year, right? Correct? By '08?	
	389:13 A. That's what I'm reading.	
389:14 - 389:19	Gustin, Dave 08-17-2018 (00:00:16)	DG04.228
	389:14 Q. And when you told these people	
	389:15 that until you understood why, there	
	389:16 shouldn't be an increase. When you told all	
	389:17 these people that, you were right, were you	
	389:18 not? You were right.	
	389:19 A. I would assume so.	
389:20 - 389:22	Gustin, Dave 08-17-2018 (00:00:07)	DG04.229
	389:20 Q. You were trying to do the right	
	389:21 thing, because McKesson had promised to play	
	389:22 its part in addressing the crisis?	
390:2 - 390:6	Gustin, Dave 08-17-2018 (00:00:08)	DG04.230
	390:2 Q. That's what you were trying to	
	390:3 do?	
	390:4 A. I believe that's why I said I	
	390:5 was proud of our efforts. I tried to do the	
	390:6 right thing, yes.	
391:2 - 391:9	Gustin, Dave 08-17-2018 (00:00:14)	DG04.231

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391:2	Q. Let me ask you: All these	
391:3	people on this e-mail, six of them, you said	
391:4	you got to know a reason. We got to know why	
391:5	before we change the threshold.	
391:6	Nobody listened to you, did	
391:7	they? Nobody listened?	
391:8	A. What we don't see down here is	
391:9	what phone calls took place.	
391:10 - 391:11	Gustin, Dave 08-17-2018 (00:00:01)	DG04.232
391:10	Q. Nobody listened to you, did	
391:11	they?	
391:14 - 391:18	Gustin, Dave 08-17-2018 (00:00:11)	DG04.233
391:14	THE WITNESS: I'm saying we	
391:15	don't see what phone calls took place,	
391:16	and at that time in May of 2008, I	
391:17	can't remember what phone calls took	
391:18	place either.	
391:20 - 392:12	Gustin, Dave 08-17-2018 (00:00:34)	DG04.234
391:20	Q. I tell you what, I just got	
391:21	done asking, where's the documentation go for	
391:22	threshold change requests.	
391:23	And what did you tell me? You	
391:24	told me it all went in the file at the	
391:25	distribution center. That's what you told	
392:1	me, right?	
392:2	A. These are retail national	
392:3	accounts. I can't remember exactly where the	
392:4	documentation resided for them. I'm -- at	
392:5	this time.	
392:6	Q. We've been provided the entire	
392:7	file, so whether it was kept in St. Louis or	
392:8	in Nebraska or RNA or in a distribution	
392:9	center, we were given the entire file.	
392:10	Do you understand that? Do you	
392:11	understand that, we were given the entire	
392:12	file?	
392:14 - 393:7	Gustin, Dave 08-17-2018 (00:00:41)	DG04.235
392:14	THE WITNESS: If you say so.	
392:15	QUESTIONS BY MR. KENNEDY:	
392:16	Q. All right. Go to the next	

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392:17 page.

392:18 A. Next page forward or back?

392:19 Q. Next page forward.

392:20 A. Okay.

392:21 Q. .3. It's now -- it's four

392:22 months later, after you tell everybody, "I

392:23 got to know why. There's got to be a

392:24 reason." It's four months later, and four

392:25 months after that, Diane Martin -- who is

393:1 Diane Martin?

393:2 A. I don't know. Worked at New

393:3 Castle, I see, but I don't know who she was

393:4 and what she did.

393:5 Q. At a distribution center?

393:6 A. I'm sorry, yes, New Castle

393:7 distribution center.

393:18 - 396:8

Gustin, Dave 08-17-2018 (00:02:44)

DG04.236

393:18 Q. Four months after you say, "I

393:19 got to have a reason, I got to know why," on

393:20 September 22, 2008, she writes you an e-mail,

393:21 Dave Gustin, correct? Correct?

393:22 A. Yes.

393:23 Q. She copies Snider and she

393:24 copies Catton.

393:25 Do you see that?

394:1 A. I see that.

394:2 Q. It's the same subject line that

394:3 we saw on the e-mails four months earlier,

394:4 "CSMP reports, 75 percent, 5/28/08."

394:5 Do you see that same subject

394:6 line?

394:7 A. Yes.

394:8 Q. And this is a chain of e-mails

394:9 that was provided to us; you understand that?

394:10 A. Yes.

394:11 Q. This is four months after you

394:12 said, got to have a reason, and she writes,

394:13 "Dave, since these were bumped up without a

394:14 TCR" --

394:15 That's a threshold change

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394:16 request, right? Is that what TCR stands for?

394:17 A. Yes.

394:18 Q. She says, "Since these were

394:19 bumped up without a threshold change request

394:20 in late May, what is the reason for the

394:21 increase in dosages? I'll have to create

394:22 some sort of TCR for each of them and will

394:23 need some details for the action taken."

394:24 Do you see that?

394:25 A. Yes, I see that.

395:1 Q. Instead you say, "No, these

395:2 threshold changes were increased four months

395:3 earlier without a request even being

395:4 created," true?

395:5 A. Without a TCR being created.

395:6 Q. Right.

395:7 Isn't that what you said?

395:8 A. That's what she said.

395:9 Q. Four months after the fact.

395:10 Right? Is that how the process

395:11 is supposed to work?

395:12 A. I can't speak to what was or

395:13 wasn't done regarding a TCR back then.

395:14 Q. Let me ask you: These

395:15 thresholds and a long list, they were -- they

395:16 were approved four months earlier and she's

395:17 still asking for the reason.

395:18 Is that how your program is

395:19 intended to work?

395:20 A. Again, I can't speak to what

395:21 happened to a TCR that may or may not have

395:22 been done back in September of '08 in a DC

395:23 that wasn't in my region.

395:24 Q. She's asking for a reason, and

395:25 what do you say? What do you respond?

396:1 "Reason...RNA reasonable request for a small

396:2 increase per Rex Catton."

396:3 Give me the Elmo, please.

396:4 Is that -- is that what you

396:5 said back, "reason..."?

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398:19 - 399:2	<p>396:6 A. Where? Oh, up here?</p> <p>396:7 Q. Yeah.</p> <p>396:8 A. Reason. I wrote that.</p> <p>Gustin, Dave 08-17-2018 (00:00:24)</p> <p>398:19 Q. The next page in this file, we</p> <p>398:20 now have a threshold change form, don't we?</p> <p>398:21 Correct?</p> <p>398:22 A. Yes.</p> <p>398:23 Q. And it's dated 5/28/08, right?</p> <p>398:24 A. That's what the date is on it,</p> <p>398:25 anticipated effective date 5/28/08.</p> <p>399:1 Q. Yeah, somebody puts 5/28/08 on</p> <p>399:2 it, and it's four months after that date?</p>	DG04.237
399:5 - 399:6	<p>Gustin, Dave 08-17-2018 (00:00:05)</p> <p>399:5 Q. Somebody put that on there four</p> <p>399:6 months after that date?</p>	DG04.238
399:10 - 399:10	<p>Gustin, Dave 08-17-2018 (00:00:00)</p> <p>399:10 Q. Correct?</p>	DG04.239
399:15 - 399:17	<p>Gustin, Dave 08-17-2018 (00:00:07)</p> <p>399:15 This is attached to the e-mail.</p> <p>399:16 That date is not accurate, is it?</p> <p>399:17 A. I have no idea --</p>	DG04.240
399:19 - 399:24	<p>Gustin, Dave 08-17-2018 (00:00:10)</p> <p>399:19 THE WITNESS: -- when the form</p> <p>399:20 was filled out, if it had a date in it</p> <p>399:21 at the time or not, where it could</p> <p>399:22 have been residing. There are too</p> <p>399:23 many things that are unknowns. I</p> <p>399:24 can't speak to that.</p>	DG04.241
400:2 - 400:12	<p>Gustin, Dave 08-17-2018 (00:00:22)</p> <p>400:2 Q. Diane Martin says, "I've got to</p> <p>400:3 create a TCR. I need a reason." You give</p> <p>400:4 her a reason, "a reasonable request for a</p> <p>400:5 small increase per Rex Catton," and attached</p> <p>400:6 on the next page is a threshold change</p> <p>400:7 request that says, "Reasonable request for a</p> <p>400:8 small amount increase per Rex Catton," and</p> <p>400:9 you don't know there's a connection?</p> <p>400:10 Is that what you're telling us</p> <p>400:11 here today, you don't know there's a</p>	DG04.242

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400:14 - 400:23	<p>400:12 connection?</p> <p>Gustin, Dave 08-17-2018 (00:00:16)</p> <p>400:14 THE WITNESS: I'm not saying</p> <p>400:15 that. I'm saying I can't remember the</p> <p>400:16 particulars surrounding this event ten</p> <p>400:17 years later.</p> <p>400:18 QUESTIONS BY MR. KENNEDY:</p> <p>400:19 Q. Look at this, Blaine Snider</p> <p>400:20 signs it. And he's -- this is the threshold</p> <p>400:21 change request that's created in September.</p> <p>400:22 And he signs it. He puts down May 28, '08,</p> <p>400:23 for his signature.</p>	DG04.243
401:2 - 401:2	<p>Gustin, Dave 08-17-2018 (00:00:01)</p> <p>401:2 Q. That ain't accurate, is it?</p>	DG04.244
401:5 - 401:5	<p>Gustin, Dave 08-17-2018 (00:00:01)</p> <p>401:5 Q. That's simply not true?</p>	DG04.245
401:8 - 401:14	<p>Gustin, Dave 08-17-2018 (00:00:12)</p> <p>401:8 Q. Correct?</p> <p>401:9 A. I can't -- I can't speak to any</p> <p>401:10 of that.</p> <p>401:11 Q. And look at that, you, Dave</p> <p>401:12 Gustin, you approved this, and you put</p> <p>401:13 5/28/08 down, and it's four months later,</p> <p>401:14 correct?</p>	DG04.246
401:16 - 401:24	<p>Gustin, Dave 08-17-2018 (00:00:14)</p> <p>401:16 THE WITNESS: I don't know that</p> <p>401:17 I put my name in there.</p> <p>401:18 QUESTIONS BY MR. KENNEDY:</p> <p>401:19 Q. You think somebody did that for</p> <p>401:20 you?</p> <p>401:21 A. I'm saying I don't have any</p> <p>401:22 idea about this form and exactly what</p> <p>401:23 transpired there. I can't answer those</p> <p>401:24 questions --</p>	DG04.247
401:25 - 402:1	<p>Gustin, Dave 08-17-2018 (00:00:01)</p> <p>401:25 Q. Is this --</p> <p>402:1 A. -- ten years after the fact.</p>	DG04.248
402:2 - 402:10	<p>Gustin, Dave 08-17-2018 (00:00:18)</p> <p>402:2 Q. Is this when you realized this</p> <p>402:3 monitoring program wasn't going to stand in</p>	DG04.249

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	402:4 the way -- stand in the way of sales?	
	402:5 When you say, "I need a	
	402:6 reason," and it gets approved anyway, and you	
	402:7 start creating threshold change requests four	
	402:8 months after the fact, is that when you	
	402:9 realized that this company wasn't serious	
	402:10 about this program?	
402:13 - 402:14	Gustin, Dave 08-17-2018 (00:00:02)	DG04.250
	402:13 THE WITNESS: That's been	
	402:14 asked, and I've answered that.	
402:18 - 402:18	Gustin, Dave 08-17-2018 (00:00:03)	DG04.251
	402:18 Q. Give me 59 -- 5017, please.	
402:19 - 404:5	Gustin, Dave 08-17-2018 (00:01:40)	DG04.309
	402:19 Flip to page -- first page.	
	402:20 This is an e-mail from you dated December 16,	
	402:21 2008.	
	402:22 Do you see that?	
	402:23 A. Yes.	
	402:24 Q. And you're e-mailing Micheal	
	402:25 Bishop.	
	403:1 And who is Micheal Bishop?	
	403:2 A. I'm trying to remember, and it	
	403:3 seems like that your -- corporate -- and I	
	403:4 can't remember if it was in San Francisco or	
	403:5 Dallas or what he did.	
	403:6 Q. And you e-mail him and you	
	403:7 asked him, "Are you in today," true?	
	403:8 A. Yes.	
	403:9 Q. If you turn the page --	
	403:10 A. Okay.	
	403:11 Q. -- to .2, you e-mail him the	
	403:12 same day, same day, December 16, '08, and you	
	403:13 state, "I need a threshold change request	
	403:14 from you signed and dated the 30th." It's	
	403:15 December 16th.	
	403:16 Do you see that? Is that what	
	403:17 you write?	
	403:18 A. That's what's written down	
	403:19 here, yes.	
	403:20 Q. You say, "I'll use it for the	

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403:21 30 percent increases I made for the RNAs that
 403:22 day after you e-mailed me all those reports."

403:23 Right?

403:24 A. Yes.

403:25 Q. That's not how the system is

404:1 supposed to work, is it? You don't

404:2 backdate -- you don't backdate threshold

404:3 change requests, right?

404:4 A. Again, I have no explanation of

404:5 something ten years ago.

405:3 - 407:2

Gustin, Dave 08-17-2018 (00:02:28)

DG04.252

405:3 Q. If you'll just listen to my

405:4 question, we're going to read every single

405:5 word on these e-mails. You asked him -- you

405:6 tell him, "I need a TCR from you signed and

405:7 dated the 30th," and it's two weeks after

405:8 that, right? And then he e-mails you back

405:9 and says, "I'm in a meeting for the next 30."

405:10 True? Is that what he says?

405:11 A. Yes.

405:12 Q. Now, turn the page and the

405:13 bottom of the next page, later that day, he

405:14 e-mails you back and says, "This is the

405:15 Thanksgiving increase."

405:16 Is that what he says?

405:17 A. Yes.

405:18 Q. And then you e-mail him back up

405:19 above, and you say, "Yep, 11/28," right?

405:20 A. Yeah.

405:21 Q. If you'll turn the page, bottom

405:22 e-mail, it's December 17th, and he sends you

405:23 back a threshold change form, right?

405:24 A. Yes.

405:25 Q. You asked him to sign one,

406:1 backdate it two weeks, and he sent you one

406:2 back, right?

406:3 A. Yes.

406:4 Q. No questions asked. No, "Hey,

406:5 Dave, this is how we're supposed to do

406:6 things." He just signs one and sends it

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406:7 back, true?

406:8 A. Right. He already knew what it

406:9 was about.

406:10 Q. Go up to the top, you sent

406:11 another e-mail that day.

406:12 You're sending an e-mail on the

406:13 17th, another e-mail, to PGDCM.

406:14 What is that?

406:15 A. PGDCM? That's the group of

406:16 distribution center managers of the DCs.

406:17 Q. And you say, "All, on

406:18 November 28, I was sent requests by Micheal

406:19 over 200 thresholds to get 30 percent

406:20 increases for various national accounts."

406:21 200, right?

406:22 A. Yes.

406:23 Q. You told Mr. Papantonio how

406:24 busy you were. You were busy. Here's 200

406:25 threshold increases of 30 percent that you're

407:1 getting sent in one day, right?

407:2 A. Yes.

407:18 - 407:22

Gustin, Dave 08-17-2018 (00:00:06)

DG04.253

407:18 Q. Is that what it says, 200 in

407:19 one day?

407:20 A. 200 thresholds?

407:21 Q. Yes.

407:22 A. Yes.

407:23 - 408:14

Gustin, Dave 08-17-2018 (00:01:00)

DG04.254

407:23 Q. You go on to say, "The attached

407:24 TCR form covers all RNA increases made that

407:25 date. Please sign and file. This is not

408:1 routine, but I was the only DRA on and so my

408:2 time was spent making the changes and I may

408:3 have missed some of the e-mails to the DCs.

408:4 Include a copy of this e-mail along with the

408:5 TCR in the file. Thanks for your patience

408:6 and understanding."

408:7 You sent this on December 17th,

408:8 about something that you had approved on

408:9 November 28th, and you're asking these folks

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408:10 two weeks after the fact to sign them and
 408:11 file them. Two weeks after the changes.
 408:12 A. Yes. I was trying to meet the
 408:13 responsibility of having documentation on
 408:14 file for something that was done.

414:6 - 415:6

Gustin, Dave 08-17-2018 (00:00:57)

DG04.255

414:6 Q. Approving an increase, because
 414:7 the customer tells you that they have
 414:8 experienced business growth or an increase in
 414:9 the sale of opioids is not an appropriate
 414:10 reason to increase a threshold, that alone,
 414:11 business growth or increase in sales, true?

414:12 A. Not in and of itself, that's
 414:13 true.

414:14 Q. In fact, you told the sales
 414:15 managers that business growth is not an
 414:16 acceptable reason for an increase in the
 414:17 threshold, true? You told them that?

414:18 A. I think so, yes. Because I
 414:19 wanted -- I wanted more than just that kind
 414:20 of information.

414:21 Q. Because a pharmacy could have
 414:22 increased sales because they're selling to a
 414:23 pill mill clinic, true?

414:24 A. That could be one reason why
 414:25 they did.

415:1 Q. They could have increased sales
 415:2 because they're filling fraudulent
 415:3 prescriptions, right?

415:4 A. There are a lot of reasons that
 415:5 they could have increased -- have increased
 415:6 business.

415:10 - 415:10

Gustin, Dave 08-17-2018 (00:00:02)

DG04.256

415:10 Q. Give me 6015, please.

415:11 - 416:18

Gustin, Dave 08-17-2018 (00:01:33)

DG04.310

415:11 This says, "RNA CSMP Process
 415:12 Review with Dave Gustin and Joe Lumpkin," and
 415:13 it's dated November 7, 2012.

415:14 Do you see that?

415:15 A. Yes.

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415:16 Q. Meeting notes, this is from a
 415:17 meeting that you had, and who were all these
 415:18 attendees? Who are those folks?
 415:19 Just are they salespeople? Are
 415:20 they people from the distribution center or
 415:21 both?

415:22 A. I need to look at the names to
 415:23 know that.

415:24 I believe these are retail
 415:25 national account reps in the Carrollton or
 416:1 Dallas area.

416:2 Q. And from your meeting notes, it
 416:3 states, "When requesting an increase, we need
 416:4 to provide specific details. Why? In most
 416:5 cases, 'Business growth' is not an acceptable
 416:6 answer. If a clinic opened up nearby, we
 416:7 need the name of the clinic. If they
 416:8 acquired a pharmacy, they will be granted
 416:9 increases based upon that acquisition only
 416:10 when the new scripts actually start coming in
 416:11 and causes thresholds to increase. The name
 416:12 of the pharmacy will be required on the TCR
 416:13 request."

416:14 Is that what you were telling
 416:15 people, business growth by itself not enough?
 416:16 A. I think this is at a training
 416:17 session that was conducted, and that sounds
 416:18 familiar.

416:22 - 416:22

Gustin, Dave 08-17-2018 (00:00:02)

DG04.257

416:22 Q. Give me 6019.

416:23 - 418:1

Gustin, Dave 08-17-2018 (00:01:07)

DG04.311

416:23 Let's look at the top page.
 416:24 This is from SharePoint where you said, "The
 416:25 TCR -- the threshold change request
 417:1 information and documentation would be stored
 417:2 starting in 2010," correct? This is from
 417:3 SharePoint.
 417:4 Do you see that?
 417:5 A. Yes.
 417:6 Q. And that's -- again, that's

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417:7 where the information, the documentation, the
417:8 threshold change requests, that's where it
417:9 would be stored at McKesson, correct?

417:10 A. Yes.

417:11 Q. And this is from SharePoint to
417:12 Cabrera, Edwin, cc to you, "Status of
417:13 threshold change request for Rigley's Drug
417:14 Stores."

417:15 Did I read that right?

417:16 A. Yes.

417:17 Q. And it says, "Greetings. Your
417:18 threshold change request for Rigley's Drug
417:19 Stores 1290 has been approved. Change type,
417:20 permanent."

417:21 So permanent change, right?

417:22 Does it say, "Reason,

417:23 permanent, business growth. Should be
417:24 supported by corresponding sales increase"?

417:25 Two words, "business growth."

418:1 And this is hydrocodone.

418:5 - 418:17 **Gustin, Dave 08-17-2018 (00:00:50)**

DG04.258

418:5 Q. Is that what it says?

418:6 A. You read it correctly.

418:7 Q. It says you approved it, right?

418:8 A. Yes.

418:9 Q. And this Exhibit 664 is -- from
418:10 what we were able to find out from
418:11 SharePoint, it is 106 times that you approved
418:12 a threshold change request with a two-word
418:13 explanation, business growth. 106 times.

418:14 A. Yeah, back in 2011.

418:15 Q. Yeah, in a two-year period that
418:16 we were given in SharePoint, in a two-year
418:17 period, business growth, that's it.

418:21 - 418:21 **Gustin, Dave 08-17-2018 (00:00:01)**

DG04.259

418:21 Q. 106 times.

418:22 - 418:25 **Gustin, Dave 08-17-2018 (00:00:05)**

DG04.312

418:22 A. Was there a question?

418:23 Q. If you want to look through

418:24 there. You want to look through there?

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422:19 - 422:19	418:25 A. No. Gustin, Dave 08-17-2018 (00:00:02)	DG04.319
422:19 - 423:17	422:19 Q. Give me 5096. Gustin, Dave 08-17-2018 (00:01:00) 422:19 Q. . This is another 422:20 threshold change form from 3/29/11. 422:21 Do you see that? 422:22 A. Yes. 422:23 Q. And there's four of them here. 422:24 All of them from 3/29/11. 422:25 The first one says, "Sinks 423:1 Pharmacy." 423:2 Do you see that? 423:3 A. Yes. 423:4 Q. 20 percent increase of 423:5 hydrocodone, and the reason for requested 423:6 change, and it says, "Be specific. Include 423:7 supporting documentation." And it's, "Spoke 423:8 with pharmacist. She indicated that she 423:9 needed an increase because they are seeing 423:10 more scripts coming in for hydrocodone. She 423:11 asked 10 percent. I upped it 20 percent." 423:12 Do you see that? 423:13 A. To restore the buffer. 423:14 Q. Yeah, the customer is saying, 423:15 "Give me 10 percent," and McKesson is giving 423:16 them 20. Is that how you were setting and 423:17 maintaining thresholds?	DG04.313
423:21 - 425:11	Gustin, Dave 08-17-2018 (00:01:58) 423:21 Q. Is that how you were doing it? 423:22 A. I have -- I have no idea what 423:23 information would -- went into making these 423:24 changes and what phone calls were made and 423:25 what reports I was looking at or anything 424:1 else. So I -- 424:2 Q. All right. This first one says 424:3 under specific reason, "Pharmacist said 424:4 seeing more scripts -- seeing more scripts 424:5 coming in." 424:6 Look at the next page, same	DG04.261

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424:7 date, different pharmacy, under reason,
 424:8 pharmacist says, "Seeing more scripts coming
 424:9 through."

424:10 Same language, same reason, on
 424:11 the next page, just a different pharmacy,
 424:12 right?

424:13 A. Yes.

424:14 Q. And again, whoever is filling
 424:15 these out said, "Hey, the pharmacist wanted
 424:16 10 percent, but I bumped it to 20," right?

424:17 A. Yes.

424:18 Q. Look at the next page, same
 424:19 date, different pharmacy, under reason for
 424:20 request, same reason, pharmacist says,
 424:21 "Seeing more prescriptions coming in,
 424:22 OxyContin, oxycodones," right?

424:23 Is that right? Oxycodone?

424:24 A. Yes.

424:25 Q. And, again, whoever is filling
 425:1 it out said, "Hey, they asked for 10, but I'm
 425:2 bumping it up to 20," is that what it said
 425:3 again?

425:4 A. Yes.

425:5 Q. Next page, same date, different
 425:6 pharmacy, 20 percent increase, same exact
 425:7 language, pharmacist said, "Seeing more
 425:8 scripts coming in. Requested 10 percent, but
 425:9 I bumped it up to 20."

425:10 Is that what it says?

425:11 A. Yes.

427:7 - 427:19 **Gustin, Dave 08-17-2018 (00:00:34)**

DG04.262

427:7 Q. Let's talk about level 1

427:8 investigations.

427:9 All right?

427:10 A. Okay.

427:11 Q. When a pharmacy got close to
 427:12 their threshold, they get warned once in
 427:13 writing and then maybe once or twice with
 427:14 phone calls. We've established that, right?

427:15 A. It sounds right.

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427:22 - 427:23	<p>427:16 Q. Despite the warnings, if a</p> <p>427:17 pharmacy ordered an opioid in excess of their</p> <p>427:18 threshold, that triggered a level 1 review or</p> <p>427:19 investigation under your policies?</p> <p>Gustin, Dave 08-17-2018 (00:00:04)</p>	DG04.263
428:10 - 429:10	<p>427:22 THE WITNESS: I think that that</p> <p>427:23 sounds like CSMP program level 1.</p> <p>Gustin, Dave 08-17-2018 (00:00:45)</p> <p>428:10 Q. That's right in the program,</p> <p>428:11 isn't it?</p> <p>428:12 A. It became -- it became a --</p> <p>428:13 something of interest that needed to be</p> <p>428:14 looked at, yes.</p> <p>428:15 Q. You were review -- it was of</p> <p>428:16 interest because they ordered over their</p> <p>428:17 threshold and it was the first step in</p> <p>428:18 evaluating something that might lead to a</p> <p>428:19 report to the DEA as being suspicious, right?</p> <p>428:20 That's what level 1 was?</p> <p>428:21 A. Yeah. If it got to a level 3</p> <p>428:22 by then, yes.</p> <p>428:23 Q. Correct.</p> <p>428:24 So these level 1</p> <p>428:25 investigations, they were important, somebody</p> <p>429:1 has ordered over their threshold, right?</p> <p>429:2 A. They were -- they were</p> <p>429:3 important to follow up on, yes.</p> <p>429:4 Q. Absolutely important.</p> <p>429:5 They were required, for every</p> <p>429:6 time somebody ordered over their threshold,</p> <p>429:7 it was required that a level 1 investigation</p> <p>429:8 take place, right?</p> <p>429:9 A. I don't have the program</p> <p>429:10 memorized, but that sounds right.</p> <p>Gustin, Dave 08-17-2018 (00:00:08)</p>	DG04.264
429:14 - 429:17	<p>429:14 Q. Legal -- excuse me, level 1</p> <p>429:15 investigations were a one-page form?</p> <p>429:16 A. One-page form. Yes, it was a</p> <p>429:17 one-page form, as I remember.</p> <p>Gustin, Dave 08-17-2018 (00:00:28)</p>	DG04.265
429:23 - 430:7	<p>Gustin, Dave 08-17-2018 (00:00:28)</p>	DG04.266

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429:23 Q. And retail sales managers were
429:24 doing level 1 investigations, weren't they,
429:25 retail sales managers?

430:1 A. As I recall, when the program
430:2 started, it was someone in-house making those
430:3 phone calls. I don't remember retail sale --
430:4 sales managers doing the call, at least
430:5 initially. I think they could find out about
430:6 it and from time to time talk to the
430:7 customer.

430:11 - 430:12

Gustin, Dave 08-17-2018 (00:00:08)

DG04.267

430:11 Q. Give me 579, please. That's
430:12 wrong. I'm sorry, 5050, Exhibit 579.

430:12 - 432:6

Gustin, Dave 08-17-2018 (00:01:45)

DG04.314

430:12 Do you
430:13 see this?
430:14 This is from you, dated
430:15 3/17/2010; is that right? You're -- you sent
430:16 this out?

430:17 A. Yes.

430:18 Q. Who are all of these people?
430:19 Are those all the -- are those salespeople,
430:20 at least part of them?

430:21 A. They're almost everybody in the
430:22 region. It's DCMs and sales folks and ARCOS
430:23 clerks. Anybody involved in the program in
430:24 ops or sales, yes.

430:25 Q. Look to the next page. This is
431:1 what you tell everybody.

431:2 A. On the V code omit report?

431:3 Q. Yeah, this is the V code omit
431:4 report.

431:5 "If an account appears in this
431:6 report, it is because the customer tried to
431:7 order a CSMP-regulated item and it failed to
431:8 fill as complete, if at all."

431:9 If somebody ordered over their
431:10 threshold, you would get an omit, it wouldn't
431:11 get filled, true? Is that true?

431:12 A. That's right.

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431:13 Q. Then you say, "The
 431:14 responsibility for the DC or sales
 431:15 partner" -- so salespeople are involved,
 431:16 right?
 431:17 "Responsibility for the DC or
 431:18 sales partner is to contact the customer, ask
 431:19 the questions that are on the level 1
 431:20 observation form."
 431:21 Do you see that?
 431:22 A. Yes.
 431:23 Q. So the salespeople, retail
 431:24 salespeople, are doing level 1 investigations
 431:25 of their own customers, right?
 432:1 A. I think that's what I said.
 432:2 It's the DC's responsibility, but sometimes
 432:3 the sales partner would --
 432:4 Q. Right.
 432:5 A. -- contact the customer.
 432:6 Q. Right.

432:23 - 433:7

Gustin, Dave 08-17-2018 (00:00:23)

DG04.268

432:23 Q. You say, "The responsibility
 432:24 for the DC or sales partner is to contact the
 432:25 customer, ask the questions on the level 1
 433:1 observation form."
 433:2 Is that what it says?
 433:3 A. Yes.
 433:4 Q. And you -- did you know and
 433:5 understand that the salespeople were paid a
 433:6 commission based upon their sales?
 433:7 Did you know that?

433:10 - 433:13

Gustin, Dave 08-17-2018 (00:00:08)

DG04.269

433:10 THE WITNESS: I don't know that
 433:11 that was true or if it was and it was
 433:12 changed or -- I don't -- I can't say
 433:13 one way or the other for sure.

434:8 - 434:19

Gustin, Dave 08-17-2018 (00:00:30)

DG04.270

434:8 QUESTIONS BY MR. KENNEDY:
 434:9 Q. I asked you that.
 434:10 Do you know -- did you know and
 434:11 understand that, that they could double their

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	434:12 income with commissions based upon sales?	
	434:13 A. Okay. I answered that. I	
	434:14 didn't -- I don't know that that was true.	
	434:15 Q. All right. And let me ask you	
	434:16 this: Did you -- did you know and did you	
	434:17 understand that the commission that they were	
	434:18 getting paid up until halfway through 2012	
	434:19 was a commission on opioids?	
434:23 - 435:6	Gustin, Dave 08-17-2018 (00:00:16)	DG04.271
	434:23 Q. Did you know that? I mean,	
	434:24 you're running the program.	
	434:25 A. I don't know if that's true.	
	435:1 Q. And you're putting these people	
	435:2 in charge of doing level 1 investigations.	
	435:3 Did you know that they were getting	
	435:4 commissions on the sales of narcotics? Did	
	435:5 you know that?	
	435:6 A. I don't remember that.	
436:7 - 436:17	Gustin, Dave 08-17-2018 (00:00:32)	DG04.273
	436:7 THE WITNESS: I don't know.	
	436:8 QUESTIONS BY MR. KENNEDY:	
	436:9 Q. Now, you told these sales folks	
	436:10 that if they were going to do level 1	
	436:11 investigations, they needed to put an	
	436:12 accurate reason down on that level 1	
	436:13 investigation, they needed an accurate reason	
	436:14 as to why their customer ordered over the	
	436:15 threshold. Weren't they told that	
	436:16 specifically?	
	436:17 A. I always wanted a good reason.	
438:18 - 438:18	Gustin, Dave 08-17-2018 (00:00:03)	DG04.274
	438:18 Q. Give me 6022, please.	
438:19 - 439:9	Gustin, Dave 08-17-2018 (00:00:44)	DG04.315
	438:19 This exhibit, that we just	
	438:20 handed you, this is a level 1 documentation	
	438:21 form, is it not? Is it not, sir?	
	438:22 A. This looks really odd.	
	438:23 Q. Does it say, "CSMP -	
	438:24 Observation/Level 1/Documentation form"? Is	
	438:25 that what it says?	

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439:1	A. Yes, it's just not how I	
439:2	remember them looking.	
439:3	Q. All right. Customer, up top,	
439:4	Kealey Pharmacies, right, is that what it	
439:5	references?	
439:6	A. Yes.	
439:7	Q. Matt Lange, retail sales	
439:8	manager, he's doing a level 1 investigation	
439:9	of his client, is he not?	
439:21 - 440:5	Gustin, Dave 08-17-2018 (00:00:23)	DG04.275
439:21	QUESTIONS BY MR. KENNEDY:	
439:22	Q. All right. RSM, so he's a	
439:23	retail sales manager?	
439:24	A. It says he's an RSM title, yes.	
439:25	Q. And then the first question:	
440:1	"Are you aware that you exceeded your	
440:2	threshold for items? If so, can you	
440:3	explain?" Answer: "Yes."	
440:4	Do you see that?	
440:5	A. Yes.	
440:19 - 441:20	Gustin, Dave 08-17-2018 (00:01:09)	DG04.276
440:19	Q. Did you agree it was important	
440:20	and it was required to put a reason down?	
440:21	A. I thought it was important to	
440:22	have a good reason.	
440:23	Q. Is that a good reason, yes, and	
440:24	nothing at all?	
440:25	A. I have no idea what	
441:1	conversations or other things went into this.	
441:2	Q. They're supposed to put it on	
441:3	the form. It says right there, "If so,	
441:4	explain." This is the form.	
441:5	A. Okay. But this looks like it	
441:6	was back in 2009, very early in the program,	
441:7	and it -- as I think I've mentioned before,	
441:8	the program evolved over time and we got	
441:9	better at things.	
441:10	Q. That's --	
441:11	A. This doesn't look like	
441:12	something that I would have liked in 2012.	

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441:13	Q. Let's go to the next page, .8.	
441:14	There's Tim Ashworth. He's a	
441:15	retail sales manager. He's doing an	
441:16	investigation on oxycodone. "Are you aware	
441:17	that you've exceeded your threshold," is the	
441:18	question. "If so, can you explain?" His	
441:19	answer is, "yes," with no explanation.	
441:20	That's not adequate, is it?	
441:23 - 442:3	Gustin, Dave 08-17-2018 (00:00:09)	DG04.277
441:23	THE WITNESS: Again, I don't	
441:24	know what went into this, and it's a	
441:25	level 1 form, meaning we don't know if	
442:1	they got any increases or anything	
442:2	else, or if it just stopped here,	
442:3	so...	
442:7 - 442:13	Gustin, Dave 08-17-2018 (00:00:19)	DG04.278
442:7	It's supposed to be documented	
442:8	here on this form, correct?	
442:9	A. Like I told you, I don't -- I	
442:10	don't really recognize this form in this	
442:11	state, so I -- something nine years ago and	
442:12	I -- that I didn't see, I have a hard time	
442:13	trying to address it.	
442:14 - 442:21	Gustin, Dave 08-17-2018 (00:00:14)	DG04.279
442:14	Q. But you also had the	
442:15	responsibility to review all of these forms	
442:16	once a month to make sure they were filled	
442:17	out properly and filed, didn't you? That was	
442:18	part of your responsibility?	
442:19	A. I don't remember that as being	
442:20	part of my responsibility to review level 1	
442:21	forms.	
442:22 - 443:10	Gustin, Dave 08-17-2018 (00:00:35)	DG04.280
442:22	Q. Look at the next page, Ashworth	
442:23	again. "Are you aware you exceeded your	
442:24	threshold? If so, please explain." No	
442:25	explanation, again, right? And we can go on	
443:1	and on.	
443:2	A. Need an explanation for an	
443:3	increase. This does not imply an increase,	

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	443:4 so I don't know where we're going with this.	
	443:5 Q. Oh, doesn't involve an	
	443:6 increase? So they don't have to --	
	443:7 A. A level 1 doesn't involve an	
	443:8 increase.	
	443:9 Q. So they don't have to fill out	
	443:10 the form right?	
443:12 - 444:4	Gustin, Dave 08-17-2018 (00:00:34)	DG04.281
	443:12 THE WITNESS: I don't think	
	443:13 that's what I said.	
	443:14 QUESTIONS BY MR. KENNEDY:	
	443:15 Q. Okay. They still need to fill	
	443:16 out the form correctly, right, whether it	
	443:17 involves an increase or not?	
	443:18 A. I'm trying to -- trouble with	
	443:19 the concept of needing an explanation for an	
	443:20 increase that you're not going to ask for or	
	443:21 get.	
	443:22 Q. You've filled the form out	
	443:23 correctly whether or not there's a request	
	443:24 for an increase. This is a level 1	
	443:25 investigation. You fill the form out. You	
	444:1 ask the questions. You do the investigation	
	444:2 regardless of whether or not they request an	
	444:3 increase. Isn't that the way things were	
	444:4 supposed to be run?	
444:7 - 444:8	Gustin, Dave 08-17-2018 (00:00:03)	DG04.282
	444:7 THE WITNESS: That's -- that	
	444:8 sounds kind of bizarre to me.	
444:10 - 444:11	Gustin, Dave 08-17-2018 (00:00:12)	DG04.283
	444:10 Q. Give me 579, please. I'm	
	444:11 sorry. 5050.	
444:11 - 444:11	Gustin, Dave 08-17-2018 (00:00:02)	DG04.316
	444:11 This is what you wrote.	
444:24 - 445:8	Gustin, Dave 08-17-2018 (00:00:27)	DG04.284
	444:24 Q. Let's read this exhibit. Let's	
	444:25 read this exhibit. This is you stating, "The	
	445:1 responsibility for the DC or sales partner is	
	445:2 to contact the customer, ask the question if	
	445:3 they're on the level 1 observation form and	

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445:4	then react accordingly with either a TCR or	
445:5	just the advisory on the form, which must be	
445:6	submitted to the DC CSMP files in any case	
445:7	that an increase is not needed. In any	
445:8	case" --	
445:17 - 446:13	Gustin, Dave 08-17-2018 (00:00:48)	DG04.285
445:17	Q. 5050, this is your statement.	
445:18	You're talking about level 1 forms.	
445:19	Do you see that? We've been	
445:20	through this before.	
445:21	A. Yes.	
445:22	Q. Do you see that?	
445:23	And do you tell everybody in	
445:24	this long list, "In any case, we need an	
445:25	accurate reason for why the account tried to	
446:1	order more than their THD permits, whether	
446:2	they want an increase or not."	
446:3	Was that your statement?	
446:4	A. Yes.	
446:5	Q. And nobody is doing it?	
446:6	A. Okay.	
446:7	Q. Correct?	
446:8	A. Nobody is -- nobody is doing it	
446:9	in 2009, and this statement is in 2010.	
446:10	Q. All right.	
446:11	A. Could very well be that this	
446:12	statement is in response to the fact that	
446:13	they weren't doing it. I don't know.	
447:15 - 448:12	Gustin, Dave 08-17-2018 (00:01:08)	DG04.286
447:15	Exhibit 656 is an audit report.	
447:16	Do you see that?	
447:17	A. Yes, I do.	
447:18	Q. This is from March 14, 2011,	
447:19	true?	
447:20	A. Yes, it seems --	
447:21	Q. And McKesson is doing this	
447:22	audit of some of their distribution centers;	
447:23	is that right?	
447:24	A. Well, I'm not familiar with	
447:25	this, but that looks right.	

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448:1	Q. Go to .4. Scope and	
448:2	objectives.	
448:3	Do you see that?	
448:4	A. Yes.	
448:5	Q. It says, "Our primary audit	
448:6	objectives were as follows: Evaluate	
448:7	distribution center financial and operational	
448:8	controls, leveraging selected STARS program	
448:9	workbooks," and under that "regulatory Drug	
448:10	Enforcement Administration."	
448:11	Do you understand that to be	
448:12	the purpose of audits?	
448:16 - 448:25	Gustin, Dave 08-17-2018 (00:00:32)	DG04.287
448:16	Q. You said you were involved with	
448:17	STARS?	
448:18	A. Yeah, I'm reading the verbiage	
448:19	on this because -- yeah.	
448:20	Q. Go to .12.	
448:21	A. Oh, I'm sorry.	
448:22	Q. Are you on .12?	
448:23	A. Yes.	
448:24	Q. Does it say, "Level 1 forms"?	
448:25	A. Yes.	
449:24 - 450:9	Gustin, Dave 08-17-2018 (00:00:28)	DG04.288
449:24	Q. Well, New Castle, that's in the	
449:25	east region, right, and it states there, "The	
450:1	omit reports" -- that's when people order	
450:2	over the thresholds. "The omit reports were	
450:3	not being signed by DC management as required	
450:4	by policy. In addition, the required level 1	
450:5	forms were not completed for 21 of 30 omits	
450:6	in July 2010 and 20 of 27 omits in	
450:7	November 2010."	
450:8	Was that because the retail	
450:9	sales managers were doing the investigations?	
450:12 - 451:6	Gustin, Dave 08-17-2018 (00:00:47)	DG04.289
450:12	Q. Do you know?	
450:13	A. I have no way of knowing that.	
450:14	Q. New Castle -- excuse me,	
450:15	Washington Court House, that's one of your	

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	450:16 distribution centers, true?	
	450:17 A. Yes.	
	450:18 Q. And it states there, "The	
	450:19 required level 1 forms were not completed for	
	450:20 all 19 omits in July of 2010, and all 11	
	450:21 omits in November."	
	450:22 What was done about that?	
	450:23 A. This is seven years ago. I	
	450:24 really -- I don't remember. This would have	
	450:25 been an audit that would have been passed on	
	451:1 back to the folks at the distribution center	
	451:2 to respond to and correct. I wouldn't	
	451:3 necessarily have seen this, so I can't speak	
	451:4 to it.	
	451:5 Q. People aren't taking this	
	451:6 level 1 review very seriously, are they?	
451:9 - 451:12	Gustin, Dave 08-17-2018 (00:00:15)	DG04.290
	451:9 Q. Are they?	
	451:10 A. I can't say yes or no to that.	
	451:11 Q. Go back to -- if we can go back	
	451:12 to 6007, which is Exhibit 651.	
451:12 - 452:23	Gustin, Dave 08-17-2018 (00:01:39)	DG04.317
	451:12 If you look	
	451:13 at the second page of exhibit -- first of	
	451:14 all, 651, this is -- this is the e-mail that	
	451:15 you sent out to all the salespeople and all	
	451:16 these folks that are working in the	
	451:17 distribution center, true? We've looked at	
	451:18 this already.	
	451:19 A. Yes, we did, or it looks like	
	451:20 the one we looked at.	
	451:21 Q. And you're talking about	
	451:22 level 1 reports in this. We've been through	
	451:23 that, true?	
	451:24 A. Yes.	
	451:25 Q. And you state at the bottom --	
	452:1 you state at the bottom and you underline it,	
	452:2 "Please do not assume the reason." That's	
	452:3 the reason for the order over the threshold.	
	452:4 You say, "Please do not assume	

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452:5 the reason, then fill out a form as if a call
 452:6 had taken place. If we ever find ourselves
 452:7 in a court of law regarding diversion and
 452:8 then we have to admit that we didn't really
 452:9 call the customer but rather just filled the
 452:10 form out like we had called, it will not be
 452:11 pretty. Word of advice."
 452:12 Why did you find a need to tell
 452:13 the sales reps not to fabricate the forms
 452:14 like they had actually done the
 452:15 investigation? Why did you find that need?
 452:16 A. As I recall, there was a
 452:17 salesperson who gave me information and then
 452:18 subsequent to that, I went back and then
 452:19 asked where they had gotten that, and I
 452:20 wasn't satisfied with the answer that I got.
 452:21 He ended up leaving not long after that, and
 452:22 that was just to make sure that nobody else
 452:23 felt like that was acceptable behavior.

453:4 - 453:9

Gustin, Dave 08-17-2018 (00:00:09)

DG04.291

453:4 Q. A pharmacy orders over their
 453:5 threshold, that's going to trigger this
 453:6 investigation, correct?

453:7 A. A level 1?

453:8 Q. Yes.

453:9 A. Yes.

453:10 - 453:17

Gustin, Dave 08-17-2018 (00:00:15)

DG04.292

453:10 Q. Going to trigger a level 1
 453:11 investigation. The order is stopped, right?
 453:12 You're not going to ship it
 453:13 until the level 1 investigation takes place,
 453:14 true?

453:15 A. That's the way the system is
 453:16 supposed to work, is that it doesn't get
 453:17 shipped. It gets canceled in the system.

478:12 - 481:7

Gustin, Dave 08-17-2018 (00:03:08)

DG04.293

478:12 Q. Mr. Gustin, when did you join
 478:13 McKesson?

478:14 A. McKesson?

478:15 Q. Yes, sir.

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478:16 A. I think it was February 21,
478:17 1995, not long after getting back from Benin,
478:18 West Africa.

478:19 Q. All right. And what were you
478:20 doing in Benin, West Africa?

478:21 A. I was a -- I was there to be a
478:22 field team administrator for a team of
478:23 missionaries.

478:24 Q. How long were you a missionary?

478:25 A. For about six years.

479:1 Q. And I think I heard you mention
479:2 during your direct you were in the Marines at
479:3 one time -- or during -- when plaintiff's
479:4 counsel was questioning you, you were in the
479:5 Marines?

479:6 A. I joined the Marines, yes.

479:7 Q. And when were you in the
479:8 Marines?

479:9 A. I was in the Marines back in
479:10 '69 and '70.

479:11 Q. So when did you become a
479:12 director of regulatory affairs at McKesson?

479:13 A. I was well into my career at
479:14 McKesson. It was somewhere back in 2008, I
479:15 think.

479:16 Q. And so before -- just tell us
479:17 briefly, between the time you joined McKesson
479:18 and when you became a director of regulatory
479:19 affairs, what jobs did you hold at McKesson
479:20 Corporation?

479:21 A. Well, I started as an hourly
479:22 employee. Early on they recognized that
479:23 I had had something extra to offer, and so
479:24 they made me a member of the management team.

479:25 And a few years later, I was both the
480:1 inventory manager and the office manager at
480:2 the Washington Court House DC working in
480:3 operations. Then I became the senior asset
480:4 manager for the North Central region and
480:5 dealt with all of the distribution center

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480:6 inventory managers over the security and loss
480:7 prevention inventory. And then Don Walker
480:8 called me in 2008 and said he was forming a
480:9 team, this team, and asked me to join it.

480:10 Q. All right. And that's when you
480:11 became a director of regulatory affairs?

480:12 A. I did, yes.

480:13 Q. So tell us briefly, what were
480:14 your job responsibilities as a director of
480:15 regulatory affairs.

480:16 A. One of the main
480:17 responsibilities naturally was managing to
480:18 thresholds and threshold increases and
480:19 vetting customers, especially the ones that
480:20 caught my eye as a result of something about
480:21 their order patterns or, you know, whatever.
480:22 So I visited customers a lot. I looked at
480:23 the Internet a lot to try and ferret out any
480:24 potential problem areas surrounding either a
480:25 new customer or an existing customer. Just
481:1 did a lot of research, a lot of
481:2 investigation. That took a lot of my time.

481:3 Q. And you held a position of
481:4 director of regulatory affairs for about
481:5 seven years until 2013, correct?

481:6 A. Yeah, with about five of it as
481:7 a field DRA and the other as an auditor.

481:12 - 482:22

Gustin, Dave 08-17-2018 (00:01:43)

DG04.294

481:12 Q. Now, you testified today about
481:13 terminating or refusing to onboard pharmacies
481:14 within your territory.

481:15 Do you recall that?

481:16 A. Yes.

481:17 Q. Okay. And why would you cut
481:18 off sale of controlled substances to
481:19 pharmacies?

481:20 A. Upon review, oftentimes on
481:21 site, something that I would see, something
481:22 that I would hear would give me pause,
481:23 whether it was a pharmacy that I sat in the

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481:24 parking lot outside of St. Louis and watched
 481:25 Kentucky license plates coming onto the
 482:1 parking lot and going in and getting drugs or
 482:2 unsatisfactory answer from the owner, manager
 482:3 of Gwinn's pharmacy or, you know, something
 482:4 to that effect.

482:5 Q. And approximately how many
 482:6 pharmacies did you terminate during the time
 482:7 that you were director of regulatory affairs?

482:8 A. I believe it was somewhere
 482:9 between, I don't know, 19, 20, 20-something,
 482:10 maybe 23, somewhere in that range. I can't
 482:11 remember for sure.

482:12 Q. And after you would terminate a
 482:13 pharmacy, would you take any steps to notify
 482:14 the DEA that you had done that?

482:15 A. I would -- yes, I would notify
 482:16 the local field office.

482:17 Q. All right. And were there also
 482:18 times that -- you talked about sort of
 482:19 cutting off a pharmacy.

482:20 Were there times that you also
 482:21 refused to onboard a pharmacy or allow a
 482:22 pharmacy to become a McKesson customer?

482:24 - 484:24

Gustin, Dave 08-17-2018 (00:02:15)

DG04.295

482:24 THE WITNESS: Yes, there were
 482:25 multiple times that a salesperson
 483:1 asked me if I would go and visit a
 483:2 pharmacy before they invested any time
 483:3 or whatever to see if -- what my
 483:4 feelings on that pharmacy were, and I
 483:5 came back with a negative answer. And
 483:6 in each of those instances, I let the
 483:7 DEA know that we didn't bring them on
 483:8 board so that they would have a
 483:9 heads-up.

483:10 QUESTIONS BY MS. BROWNING:

483:11 Q. Now, you were asked some
 483:12 questions earlier about Community Drug and
 483:13 your interactions with them. I think they're

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483:14 in Manchester, Kentucky; is that correct?

483:15 A. Yes.

483:16 Q. After you cut off -- you

483:17 terminated sales of controls to Community

483:18 Drug, correct?

483:19 A. Yes.

483:20 Q. And after you did that, did you

483:21 notify the DEA?

483:22 A. Yes.

483:23 Q. And what -- tell us about that.

483:24 A. My recollection of that, and

483:25 it's been a long time ago, was that I was

484:1 asking questions about them. After they

484:2 became on board, I asked more questions about

484:3 them. I began hearing things that were

484:4 unsettling. I followed up by phone calls to

484:5 the Board of Pharmacy. I'm not sure, but it

484:6 seemed like there was potential action, and

484:7 then as is the case sometimes, and this

484:8 happened outside of St. Louis, too, they

484:9 didn't want to have them just cut off, if

484:10 they were in the middle of an investigation,

484:11 and, therefore, be given a heads-up that

484:12 something might be up. So we reduced them to

484:13 standard thresholds, and I refused to talk

484:14 with the owner any, you know, after that, and

484:15 I don't know that I talked with him before

484:16 that.

484:17 And I remember we ended up --

484:18 the DEA ended up taking action on them.

484:19 Naturally, we -- not too much after that, I

484:20 got a phone call from the DEA, I think it was

484:21 Jeff Connors and a supervisor or something

484:22 like that. They congratulated me on it and

484:23 asked what might have tipped off that it

484:24 wasn't a good pharmacy.

485:6 - 485:23

Gustin, Dave 08-17-2018 (00:00:47)

DG04.296

485:6 Q. When you would contact the DEA

485:7 about customers, how would they respond?

485:8 A. Oftentimes they would play it

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485:9 very close to the vest. They didn't want to
 485:10 say too much over the phone or tell me too
 485:11 much of anything. About the best I could
 485:12 hope for was there was a DEA agent, I think
 485:13 his name was Dave Tatemple [phonetic], and he
 485:14 operated in the St. Louis market, and he
 485:15 would give me cryptic -- kind of cryptic
 485:16 replies saying, "Well, as a matter of fact,
 485:17 we are aware of that customer," something to
 485:18 that effect.
 485:19 I think that kept him from
 485:20 saying too much, and at the same time it
 485:21 gave -- it gave me a heads-up that there may
 485:22 be something to really look at on that
 485:23 customer form. It's just not go near him.

Plaintiffs' Designations = 02:10:16

Defense Completeness Designations = 00:26:53

Plaintiffs' Counter Counter Designations = 00:03:49

Defense Counters = 00:07:57

Total Time = 02:48:55